

In District Court

County of _____

_____**Judicial District**

_____,
Plaintiff,
vs
_____,
Defendant.

Case No. _____

**Answer Brief to
Motion to Prohibit
Public Access**

If you've received a Motion to Prohibit Public Access, this document is your chance to respond to the statements made by the moving party. You have fourteen (14) days after you were served the Motion and Brief to respond by serving and filing an Answer Brief and other supporting documents. The Court is allowed to disregard any Answer served or filed with the Court after this deadline.

Please respond to each of the statements checked by the moving party. Attach additional sheets as necessary.

1. The opposing party files this Answer Brief in response to the moving party's Motion to Prohibit Public Access.
2. The opposing party further files this Answer Brief in response to the moving party's request that the documents be labeled (*choose one*) ☐ sealed/ ☐ confidential.

Facts

3. The above-named case is one for (*state type of case*) _____.

4. The opposing party was served with the Motion to Prohibit Public Access and supporting documents on *(date you were served with the Motion and supporting documents)*

5. In that Motion, the moving party also requested that the documents be labeled (*choose one*) ☐ sealed/ ☐ confidential.

6. The moving party claims there are relevant facts as to why this Motion was brought. The opposing party's response to the moving party's claimed relevant facts is stated in their Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

Law and Argument

7. [Administrative Rule 41, Section 4\(a\)](#) states as follows:

(a) Request to Restrict Access.

- (1) A request to the court to declare a case record to be a confidential record may be made by any party to a case, by the individual about whom information is present in the case record, or on the court's own motion on notice as provided in subsection 5(f)(3).
- (2) The court must decide whether there are sufficient grounds to overcome the presumption of openness of case records and prohibit access according to applicable law.
- (3) In deciding whether to restrict access 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. Considerations should include:
 - (A) the risk of injury to individuals,
 - (B) individual privacy rights and interests,
 - (C) proprietary business information, and
 - (D) public safety.

- (4) Any access restriction must be no broader than necessary to protect the articulated interest. The court must consider reasonable alternatives declaring a record confidential, such as redaction or partial restrictions, and the court must make findings adequate to support the restriction. The court may not deny access to an entire record solely on the ground that the record contains confidential or closed information.
- (5) In restricting access the court must use the least restrictive means that will achieve the purposes of this rule and the needs of the requestor.
- (6) If a victim, as defined in [N.D.Const. Art. I, § 25\(4\)](#) requests, all victim contact information in a criminal case record must be redacted.
- (7) If the court concludes, after conducting the balancing analysis and making findings as required by subsection 4(a)(3), that the interest of justice will be served, it may prohibit remote access to an individual defendant's electronic case record in a criminal case:
 - (A) if the charges against the defendant are dismissed; or
 - (B) if the defendant is acquitted.

If the court grants a request to restrict remote access to an electronic case record in a criminal case, the search result for the record must display the words “Internet Access Prohibited under N.D.Sup.Ct.Admin.R. 41.” Such records remain available by in-person request at a court facility.

8. [North Dakota Rules of Court 3.4\(c\)\(2\)](#) states as follows:

(c)(2) Motion. A party may move that a filing be designated “confidential” or “sealed”. In its motion, the party must show that protection of the filing is justified under N.D.Sup.Ct.Admin.R. 41(4)(a). A motion to protect a filing from public access, the filing in question, and any supporting documents, must be filed as “confidential” until the court makes its ruling. A court record may not be designated “confidential” or “sealed” under these rules when reasonable redaction will adequately resolve the issues and protect the parties.

9. The moving party claims that because these records have remained available for open access, the moving party has sustained or is likely to sustain harm. My response to the moving party’s claimed harms is stated in Paragraph 4 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

10. The moving party is requesting the court (*select the same as the moving party*):

- ☐ **a. Prohibit access to the entire case.**
- ☐ **b. Restrict access to documents as listed in the moving party's Brief.**
- ☐ **c. Redact the requested information from documents filed in the above-named case, as listed in the moving party's Brief.**

11. My response to the moving party's requests to prohibit public access to their specific records, or parts of records is stated in Paragraph 5 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

12. The moving party claims their requested actions to prohibit access will protect the moving party from further harm. My response is stated in Paragraph 6 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

13. The moving party claims their requests to prohibit access are no broader than necessary to protect the moving party from further harm. The requests are (*choose one*):

- ☐ No broader than necessary to protect the moving party from further harm.
- ☐ Broader than necessary to protect the moving party from further harm.

(*Explain why you chose the checkbox above; Paragraph 13 continues on next page*):

(Paragraph 13 continued)

14. The moving party is also requesting the records be designated as (*choose one*)

☐ sealed/☐ confidential and that this request is justified under [N.D.Sup.Ct.Admin.R. 41, Section 4\(a\)](#) and [N.D.R.Ct. 3.4\(c\)](#).

15. My response to the moving party's requests to designate the records as ☐ sealed/

☐ confidential is stated in Paragraph 7 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

Conclusion

16. (*Choose one; Paragraph 16 continues on next page*):

☐ Based on the minimal interest in maintaining open access in this matter compared to the substantial harm the moving party has sustained or is likely to sustain because access has been allowed, there are sufficient grounds to overcome the presumption of openness of case records and prohibit access as requested by the moving party.

☐ The harm the moving party claims has been sustained or is likely to be sustained does **not** overcome the presumption of maintaining open records. There are **not** sufficient grounds to overcome the presumption of openness of case records and prohibit access as requested by the moving party.

☐ The opposing party respectfully requests that access to court records be prohibited as indicated in paragraph 5 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access and as requested by the moving party. The opposing party further requests that public access to all other court records in the moving party's motion remain open.

☐ The opposing party respectfully requests that the record **not be labeled** as (choose one) ☐ sealed/☐ confidential as requested in paragraph 7 of the Declaration in Support of Answer Brief to Motion to Prohibit Public Access.

Dated _____.

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email