

Instructions to Answer a Motion to Prohibit Public Access to Court Case Records – in a Civil or Criminal Case

Important! Read Before Using this Packet of Forms.

ND Legal Self Help staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

ND Legal Self Help Center forms **aren't** official court forms. Judges and courts **aren't** required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer for information about finding a lawyer to represent you.

When you represent yourself, you're expected to know and follow the law, including:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders; and
 - Any local court rules.

Links to the state laws, case law, and court rules can be found at ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help.

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

*These instructions and forms **aren't** a complete statement of the law. They cover the basic procedure for answering a Motion to a North Dakota state district court to prohibit public access to the entire court case, to specific documents filed in the court case, or to redact (block from view) information within documents filed in the court case. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided.*

Use these forms and instructions at your own risk.

Don't Delay!

You have limited time to answer a written Motion to Prohibit Public Access to court case records!

- You have 14 days to answer if served by personal delivery or at your office.
- You have 17 days to answer if served by mail or third-party commercial carrier.

(See Page 9 for more information about calculating these deadlines.)

What Rules Do You Need to Know to Use this Packet?

[Rule 41, Section 4\(a\) of the North Dakota Supreme Court Administrative Rules](#) applies to requests to prohibit public access to records in a civil or criminal court case in North Dakota State District Court.

[Rule 3.2 of the North Dakota Rules of Court](#) applies to motions in civil and criminal cases in North Dakota State District Court.

[Rule 3.4 of the North Dakota Rules of Court](#) applies to protecting information in documents filed in North Dakota State District Court cases.

[Rule 47 of the North Dakota Rules of Criminal Procedure](#) applies to motions in a criminal case in North Dakota State District Court.

- If the case number includes “CR,” you need to know this rule.
- If the case number **doesn’t** include “CR,” you **don’t** need to know this rule.

Who May Use this Packet?

1. A self-represented individual who is one of the following in a North Dakota state district court civil or criminal case:
 - Plaintiff or Petitioner;
 - Defendant or Respondent; or
 - Victim (*in a criminal or delinquency case only*).
2. And, one of the following made a written Motion to the district court to prohibit access to court case records: 1) another party in the case; 2) a victim in the criminal or delinquency case; or 3) a person with information about them in documents in the case.

Caution! A self-represented individual may **only** represent themselves when using this packet of forms. An individual can perform the functions of a lawyer for themselves at their own risk. This is called legal self-representation.

- An individual **can't** delegate legal self-representation to a non-lawyer. Legal documents signed by a non-lawyer on behalf of a self-represented individual are considered void.

Motions to Prohibit Public Access **Don't** Expunge (Delete) the North Dakota State District Court Case Records

Even if public access to all or part of an individual's civil or criminal court case records is prohibited by the district court, the court's order **doesn't** delete (expunge) the information from the court case record or the records kept by any other government entity or private entity.

- If the district court orders the entire case or documents within a case to be prohibited from public access, the court may order access to the case or documents upon request. *(The request is made by written motion under [Rule 41, Section 4\(b\) of the North Dakota Supreme Court Administrative Rules](#).)*
- If the district court orders redaction (*blocking from view*) of information within a document in the case, the redacted information is included on a Confidential Information Form filed in the court case. The Confidential Information Form is only accessible to the court and parties.

If you want to research expungement or sealing criminal record options in North Dakota, go to [Expungement](#).

Forms in this Packet

- Form 7: Answer Brief to Motion to Prohibit Public Access
- Form 8: *(Optional)* Answer Brief Supplemental Page
- Form 9: Declaration in Support of Answer Brief to Motion to Prohibit Public Access
- Form 10: Confidential Information Form
- Form 11: Declaration of Service by Mail

Before Completing and Signing the Forms

Review the forms carefully and decide if the forms apply to your situation. If you don't know if you should use these forms, consult a lawyer who is licensed to practice in North Dakota **and** can agree to represent you.

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.

Including Protected Information When You Fill Out the Forms

When you file this Answer to Motion with the North Dakota State District Court, all documents, **except** Form 10: Confidential Information Form, are available to the public to view.

Court case records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is protected and required to remain confidential, even if the protected information is part of a public court case record.

Protected Information is:

- Social Security Number or Taxpayer Identification Number.
- Birthdates.
- Minor child's name.
 - However, if the minor child is a party in the case, the minor child's full name **isn't** protected information. For example, in a case to change a minor child's name, or appoint a conservator for the minor child, the child's full name must appear.
- Financial account number, including any credit, debit, investment or retirement account number.
- **If the victim requests**, victim contact information in a criminal or delinquency case.
 - Victim contact information means any information that would allow someone to make contact. Contact information includes, but isn't limited to, names, addresses, phone numbers, email addresses, and places of employment.

You may need to refer to Protected Information when you fill out the forms. When you fill out the forms, write or type **Only:**

- The last four (4) digits of the social security number and taxpayer identification number.
- The year of birth.
- The minor child's initials.
- The last four (4) digits of the financial-account number.
- "Victim contact information" to refer to victim contact information in a criminal or delinquency case.

The district court still needs to have access to the full Protected Information. Complete Form 10: Confidential Information Form with the full Protected Information you reference in the forms.

Form 10: Confidential Information Form is filed as a confidential document and **isn't** available to the public to view.

Finding the Case Number and Document Index Numbers

You may verify the North Dakota State District Court case number and Index Numbers of any specific documents to which the moving party refers in their Motion to Prohibit Public Access.

Go to ndcourts.gov/public-access.

- Read the information, then click "Click Here to Proceed."
- Select a location from the pull down menu. Select a county or the State of North Dakota.
- Click the link for the type of records you want to search.
- To search for an individual by name:
 - Select "Name".
 - Enter at least the first three letters of the individual's last name, followed by an asterisk (*). For example, if the last name is Smith, enter at least smi*.
 - Enter at least the first letter of the individual's first name, followed by an asterisk (*). For example, if the first name is Jane, enter at least j*.
 - Click the "Search" box.
- To search for business by name:
 - Select "Business".
 - Enter at least the first three letters of the business name, followed by an asterisk (*).
 - Click the "Search" box.

- The screen lists publically accessible court cases based on your search.
- To review an individual case and to see the list of documents filed, click on the case number.
 - Case numbers are listed on the left-hand side of the page.

If you want to view and/or get copies of any of the documents listed in a case, contact the [clerk of court of the county](#) where the case was filed.

Each filed document is assigned an Index Number. The Index Number is listed to the right of the name of the document. For example, "Index # 1".

Give the clerk of court the case number and Index Number of each document you want to view/copy.

Ask the clerk of court for the amount of the fee for copying documents.

Parties in the Motion

Plaintiff/Petitioner –

- In civil cases, the person(s) listed as the Plaintiff/Petitioner in the Complaint/Petition for the civil case.
- In criminal cases, the government. Usually, the State of North Dakota or the name of the municipality.

Defendant/Respondent –

- In civil cases, the person(s) listed as the Defendant/Respondent in the Complaint/Petition for the civil case.
- In criminal cases, the individual who was charged with a criminal offense.

Moving party – The person bringing the Motion to Prohibit Public Access to court case records. The moving party in the Motion may be either the Plaintiff/Petitioner, the Defendant/Respondent, a victim in the case, or an individual with information about them in the court case records.

Opposing party – The other parties in the court case. In other words, the individual who completes and signs the forms in this packet. (Also called the Non-moving party.)

Definitions

The following definitions are intended to be helpful, **but** they aren't intended to address every possible meaning of the terms in this section.

Case Records – Under [Rule 41 of the North Dakota Supreme Court Administrative Rules](#), case records are records relating to a particular judicial proceeding, including an index, calendar, docket, register of actions, official record of the proceeding, order, decree, judgment or minute order.

Confidential – Information in a court record as described in [Rule 3.4\(a\)\(1\) of the North Dakota Rules of Court](#) or as ordered by the court, which is protected from public access but remains accessible to the court and the parties.

Protected Information – Under [Rule 3.4 of the North Dakota Rules of Court](#), the following is protected information in documents filed in North Dakota state court cases:

- Social Security Number or Taxpayer Identification Number.
 - **Only** the last 4 digits appear in the document.
- Birthdate.
 - **Only** the year of birth appears in the document.
- Minor child's name.
 - **Only** the minor child's initials appear in the document.
 - However, if the minor child is a party in the case, the minor child's full name **isn't** protected information. For example, in a case to change a minor child's name or to appoint a conservator for the minor child, the child's full name must appear.
- Financial account number, including any credit, debit, investment or retirement account number.
 - **Only** the last 4 digits appear in the document.
- **If the victim requests**, victim contact information in a criminal or delinquency case.
 - Victim contact information means any information that would allow someone to make contact. Contact information includes, but isn't limited to, names, addresses, phone numbers, email addresses, and places of employment.

Record – Under [Rule 41 of the North Dakota Supreme Court Administrative Rules](#), record means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a court of North Dakota and which has been received or prepared for use in connection with public business or contains information relating to public business.

“Record” doesn’t include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. “Record” doesn’t include records that have been disposed of under court records management rules, or records to which a court has access but which are not a part of the court records.

Redact – Under [Rule 3.4\(a\)\(1\) of the North Dakota Rules of Court](#), to remove confidential information from a court record to protect it.

- The document remains available to view, but the redacted content in the document is usually replaced with a black rectangle.
- For example:
 - Not redacted = My social security number is 000-00-1234.
 - Redacted = My social security number is [REDACTED]-[REDACTED]-1234.

Sealed – Under [Rule 3.4\(a\)\(1\) of the North Dakota Rules of Court](#), court records that are protected from public access, party access and access by unauthorized court personnel.

Victim – A person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" doesn’t include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Steps to Prepare, Serve and File the Forms in the Packet

Step 1: You, the Opposing Party, Calculate your Deadline to Answer the Motion

You have 14 calendar days to answer if you were served the Motion to Prohibit Public Access by personal delivery or at your office.

- The date of service is the date the Motion to Prohibit Public Access was personally delivered to you or left at your office.

You have 17 calendar days to answer if you were served the Motion to Prohibit Public Access by mail or third party commercial carrier.

- The date of service is the date the Motion to Prohibit Public Access was mailed.
- Keep the envelope with the postmarked date for reference.

When calculating days:

- Don't include the date of service;
- Count by calendar days, including Saturdays, Sundays, and state holidays; and
- Include the last day of the period, **but** if the last day is a Saturday, Sunday, or state holiday, the period continues to run until the end of the next day that **isn't** a Saturday, Sunday, or state holiday.

If you, the opposing party, **don't** serve and file a written Answer to the Motion to Prohibit Public Access, the judge or judicial referee may consider this an admission by you, the opposing party, that the Motion to Prohibit Public Access has merit.

Step 2: You, the Opposing Party, Prepare the Answer Forms

Form 7: Answer Brief to Motion to Prohibit Public Access

This is the required written document where you, the opposing party, make your written argument about whether the court should or should not grant the moving party's Motion to Prohibit Public Access. An Answer Brief takes the relevant laws or rules that support your response and explains how they apply to the facts of your particular situation.

- **Top of Form (Caption)**
 - Enter the county and district court names from the Notice of Motion served on you by the moving party.
 - Fill in Plaintiff/Petitioner and Defendant/Respondent from the Notice of Motion.
 - Enter the case number from the Notice of Motion.
- **Complete Paragraphs 1 through 16 of the Form**
- **Date and Signature**
 - Date and sign the form.
 - Complete the lines following the signature line.

Form 8: (Optional) Answer Brief Supplemental Page

This is an optional form. If you need additional space for your Form 7: Answer Brief, you may use this form.

- **Top of Form (Caption)**
 - Fill in the case number from Form 7: Answer Brief.
- **Complete the form as needed**

Form 9. Declaration in Support of Answer Brief to Motion to Prohibit Public Access

This is your required written statement of fact. The Declaration must be dated and signed by you, the opposing party.

- **Top of Form (Caption)**
 - Fill in the Caption exactly as you filled in the Caption for Form 7: Answer Brief.
- **Complete Paragraphs 1 through 8 of the Form**
- **Date and Signature**
 - Date and sign the form.
 - **(Caution:** You're declaring under penalty of perjury that everything you stated in this Declaration is true and correct.)
 - Complete the lines following the signature line.

Form 10. Confidential Information Form

This form lists the full protected information that isn't allowed to appear in other documents filed with the court. This form is a part of the court record that isn't seen by the public.

See the "Including Protected Information When you Fill Out the Forms" section on Pages 4-5, and the definition of "Protected Information" on Pages 7-8.

- **Top of Form (Caption)**
 - Fill in the Caption exactly as you filled in the Caption for Form 7: Answer Brief.
- **Fill in all applicable sections of the form**
- **Date and Signature**
 - Date and sign the form.
 - Complete the lines following the signature line.

STEP 3: You, the Opposing Party, Arrange for Service of Copies of the Completed Forms

Before the district court can consider your Answer to Motion, you must serve a copy of the following completed forms and any exhibits on all parties in the civil or criminal case:

- Form 7: Answer Brief to Motion to Prohibit Public Access
- Form 8: *(Optional)* Answer Brief Supplemental Page
 - **Only** if you used this form.
- Form 9: Declaration in Support of Answer Brief to Motion to Prohibit Public Access
- Any exhibits (*you might not have any exhibits*)

Don't serve Form 10: Confidential Information Form! You file this form in Step 4.

Form 11. Declaration 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 old.

If serving a State's Attorney by mail, the person mailing the documents must mail them to the State's Attorney's office. Contact information for State's Attorneys in North Dakota is available at ndcourts.gov/court-locations. Click the name of the County for the contact information.

Postage must be first class and pre-paid. The person mailing the documents must complete the Declaration of Service by Mail. Service is complete upon mailing.

- **Top of Form (Caption)**
 - The person who mailed the documents fills in the Caption exactly as the Caption for Form 7: Answer Brief is filled in.
- **Complete Paragraphs 1 through 6 of the Form**
 - The person who mailed the documents fills in paragraphs 1 through 6.
- **Date and Signature**
 - The person who mailed the documents dates and signs the form and completes the lines following their signature.

If more than one party was served, you need a Form 11: Declaration of Service completed and signed for each party.

Step 4: You, the Opposing Party, File the Original, Completed Forms with the Clerk of Court

File the following original, completed forms and any exhibits with the clerk of court where the civil or criminal case is filed:

- Form 7: Answer Brief to Motion to Prohibit Public Access;
- Form 8: *(Optional)* Answer Brief Supplemental Page;
 - **Only** if you used this form
- Form 9: Declaration in Support of Answer Brief to Motion to Prohibit Public Access;
- Form 10: Confidential Information Form;
- Any exhibits (*you might not have any exhibits*); and
- Form 11: Declaration of Service by Mail (*one for each party served*).

If you're required to pay a filing fee and can't afford to pay, complete the Fee Waiver Forms available at ndcourts.gov/legal-self-help/fee-waiver.

- File the Fee Waiver Forms at the same time you file your Answer to Motion documents.

After your Answer to Motion is filed with the Clerk of Court, the Clerk of Court forwards your Answer to Motion to the Judge or Judicial Referee for review.

STEP 5: Review by the Court

If the Motion **is Granted:** If the district court decides there are reasonable grounds to prohibit public access, the Judge or Judicial Referee signs a Findings of Fact, Conclusions of Law, and Order. The Clerk of Court is instructed by the Order to restrict public access to the court case records as indicated in the Findings of Fact, Conclusions of Law, and Order.

If the request that the documents be labeled sealed, or confidential **is** granted, the Clerk of Court is instructed by the Order to label the document as sealed or confidential

If the Motion **isn't Granted:** If the district court decides that there aren't reasonable grounds to prohibit public access, the Judge or Judicial Referee issues an Order denying the Motion and the case records remains open to public access.

If the request that the documents be labeled sealed, or confidential **isn't** granted, the Judge's or Judicial Referee's Order will deny the request.