

RULE 41. ACCESS TO ~~JUDICIAL~~ COURT RECORDS

Section 1. ~~Policy.~~ ~~Judicial records are generally open to the public for examination, inspection, and copying during regular office hours, subject to reasonable inspection restrictions to ensure the integrity of those records. This rule, does not affect the confidential status of certain records whose confidentiality is required by state or federal law or court rule or policy. This rule seeks to balance the competing interests of disclosure and confidentiality by providing guidelines to courts and court personnel in determining the accessibility of judicial records in the custody of the judicial system.~~ 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. ~~In this Rule:~~

(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:

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

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

27 (c) “Public access” means that the public may inspect and obtain a copy of the
28 information in a court record.

29 (d) “Remote access” means the ability to electronically search, inspect, or copy
30 information in a court record without the need to physically visit the court facility where the
31 court record is maintained.

32 (e) “Bulk distribution” means the distribution of all, or a significant subset, of the
33 information in court records, as is and without modification or compilation.

34 (f) “Electronic form” means information in a court record that exists as:

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

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

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

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

41 (g) Definitions Of Other Key Terms.

42 (1) “Custodian” means the clerk of ~~the district~~ court.

43 (2) “Custodial judge” means, ~~for any record of a judicial proceeding in a case file in~~
44 ~~the district court, the judge presiding in that case or the judge designated in writing by the~~

45 presiding judge of the judicial district; and, for any record not in a case file in the district
46 court, the presiding judge of the judicial district or the judge designated in writing by the
47 presiding judge the judicial officer assigned to decide a records access issue.

48 (3) “Court Personnel personnel” means clerks, judges, and staff of a district court.

49 (5) “Records” means all documents and things filed or docketed in the office of clerk
50 of district court and does not include administrative records.

51 Section 3. Records Subject to Examination, Inspection, and Copying. Except as
52 provided in Sections 4, 5, 8, and 9, all records are subject to examination, inspection, and
53 copying. Access to Court Records.

54 (a) In General.

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

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

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

63 (b) Obtaining Access to Court Records.

64 (1) Request for Court Records. Any person desiring to inspect, examine, or copy a
65 court record shall make an oral or written request to the custodian. If the request is oral, the
66 custodian may require a written request if the custodian determines that the disclosure of the

67 record is questionable or the request is so involved or lengthy as to need further definition.
68 The request must clearly identify the record requested so that the custodian can locate the
69 record without doing extensive research. Continuing requests for a document not yet in
70 existence may not be considered. A clerk of court is not required to allow access to more than
71 ten files per day per requestor but may do so in the exercise of the clerk's discretion if the
72 access will not disrupt the clerk's primary function.

73 (2) Response to Request. The custodian shall respond to the request as promptly as
74 practical. If the request for access and inspection is granted, the custodian may set reasonable
75 time and manner of inspection requirements that ensure timely access while protecting the
76 integrity of the records and preserving the affected office from undue disruption. The
77 inspection area must be within full view of court personnel whenever possible. The person
78 inspecting the records may not leave the court facility until the records are returned and
79 examined for completeness. If a request cannot be granted promptly, or at all, an explanation
80 must be given to the requestor as soon as possible. The requesting person has a right to at
81 least the following information: the nature of any problem preventing access and the specific
82 statute, federal law, or court or administrative rule that is the basis of the denial. The
83 explanation must be in writing if desired by the requestor.

84 (3) Response by Custodial Judge. If a custodian determines there is a question about
85 whether a record may be disclosed, or if a written request is made for a ruling by a judge
86 after the custodian denies or grants the request, the custodian shall refer the request to the
87 custodial judge for determination. The custodial judge shall use the standards listed in
88 Section 5(b) to determine whether the record should be disclosed.

89 Section 4. Remote Access, Bulk Distribution and Access to Compiled Information.

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

93 (1) litigant/party indexes to cases filed with the court;

94 (2) listings of new case filings, including the names of the parties;

95 (3) register of actions showing what documents have been filed in a case;

96 (4) calendars or dockets of court proceedings, including the case number and caption,
97 date and time of hearing, and location of hearing;

98 (5) judgments, orders, or decrees in a case and liens affecting title to real property.

99 (6) Reports specifically developed for electronic transfer approved by the state court
100 administrator. Reports which are generated in the normal course of business are available if
101 the report does not contain information which is confidential by law or court rule.

102 Terminals or computers for the public's access to court information systems will be
103 allowed to access information which would otherwise be available.

104 (b) Requests for Bulk Distribution of Court Records.

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

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

111 comply with the provisions of Section 5(b).

112 (c) Access to Compiled Information From Court Records.

113 (1) Compiled information is defined as information that is derived from the selection,
114 aggregation or reformulation by the court of some of the information from more than one
115 individual court record.

116 (2) Any member of the public may request compiled information that consists solely
117 of information that is publicly accessible and that is not already available under Section 3(b)
118 or in an existing report. The court may compile and provide the information if it determines,
119 in its discretion, that providing the information meets criteria established by the court, that
120 the resources are available to compile the information and that it is an appropriate use of
121 public resources. The court may delegate to its staff or the clerk of court the authority to
122 make the initial determination as to whether to provide compiled information.

123 (3) Requesting compiled restricted information.

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

127 (B) The request shall:

128 (i) identify what information is sought ,

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

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

133 (C) The court may grant the request and compile the information if it determines that
134 doing so meets criteria established by the court and is consistent with the purposes of the
135 access policy, the resources are available to compile the information, and that it is an
136 appropriate use of public resources.

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

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

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

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

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

148 ~~Section 4. Records Exempt from Disclosure. The following records are confidential~~
149 ~~and exempt from disclosure:~~

150 Section 5. Limits on Access to Court Records

151 (a) Court Records Excluded From Public Access. The following information in a court
152 record is not accessible to the public:

153 ~~(1) Documents and records to the extent access is otherwise restricted by state or~~
154 ~~federal law or court rule or policy. A partial list is contained in the Appendix to this rule.~~

155 information that is not accessible to the public under federal law;

156 (2) information that is not accessible to the public under state law, court rule or case
157 law, including:

158 (A) ~~Affidavits~~ affidavits or sworn testimony and records of proceedings in support of
159 the issuance of a search or arrest warrant pending the return of the warrant.;

160 (3B) ~~Information~~ information in a complaint and associated arrest or search warrant
161 to the extent confidentiality is ordered by the court under Section 29-05-32 or 29-29-22,
162 NDCC.;

163 (4C) ~~Documents~~ documents filed with the court for in-camera examination pending
164 disclosure.

165 (5D) ~~Except for orders of the court, domestic~~ domestic violence protection order files
166 and disorderly conduct restraining order files when the restraining order is sought due to
167 domestic violence. except for orders of the court;

168 (6E) ~~Names~~ names of qualified or summoned jurors and contents of jury qualification
169 forms if disclosure is prohibited or restricted by order of or questionnaires unless disclosure
170 is ordered by the court.

171 (F) records of voir dire of jurors unless disclosure is permitted by court order or rule;

172 (G) records of deferred impositions of sentences resulting in dismissal;

173 (H) social security numbers, credit, debit, or electronic fund transfer card numbers,
174 and any financial account numbers;

175 (I) judge and court personnel work material, including personal calendars,
176 communications from law clerks, bench memoranda, notes, work in progress, draft

177 documents and non-finalized documents; and

178 (J) any other document or record when access is restricted by state law or court rule
179 or order.

180 ~~Section 5. Other Prohibitions or Limitations on Disclosure. Records subject to~~
181 ~~inspection, examination, and copying under Section 3 and not exempt from disclosure under~~
182 ~~Section 4, may be prohibited or limited from disclosure by order of the court on a case-by-~~
183 ~~case basis. In ruling on whether specific records should be disclosed or sealed by order of the~~
184 ~~court, the court shall determine and make a finding of fact as to whether the interest for~~
185 ~~closure exceeds the interest in public disclosure. If the court prohibits or limits a disclosure,~~
186 ~~it must fashion the least restrictive exception from disclosure. In applying these rules, the~~
187 ~~court is referred to traditional legal concepts in the law of North Dakota.~~

188 ~~Section 6. Request for Records. Any person desiring to inspect, examine, or copy a~~
189 ~~judicial record shall make an oral or written request to the custodian. If the request is oral,~~
190 ~~the custodian may require a written request if the custodian determines that the disclosure of~~
191 ~~the record is questionable or the request is so involved or lengthy as to need further~~
192 ~~definition. The request must clearly identify the record requested so that the custodian can~~
193 ~~locate the record without doing extensive research. Continuing requests for a document not~~
194 ~~yet in existence may not be considered. A clerk of court is not required to allow access to~~
195 ~~more than ten files per day per requestor but may do so in the exercise of the clerk's~~
196 ~~discretion if the access will not disrupt the clerk's primary function.~~

197 ~~Section 7. Response to Request. The custodian shall respond to the request as~~
198 ~~promptly as practical. If the request for access and inspection is granted, the custodian may~~

199 ~~set reasonable time and manner of inspection requirements that ensure timely access while~~
200 ~~protecting the integrity of the records and preserving the affected office from undue~~
201 ~~disruption. The inspection area must be within full view of court personnel whenever~~
202 ~~possible. The person inspecting the records may not leave the court facility until the records~~
203 ~~are returned and examined for completeness. If a request cannot be granted promptly, or at~~
204 ~~all, an explanation must be given to the requestor as soon as possible. The requesting person~~
205 ~~has a right to at least the following information: the nature of any problem preventing access~~
206 ~~and the specific statute, federal law, or court or administrative rule that is the basis of the~~
207 ~~denial. The explanation must be in writing if desired by the requestor.~~

208 ~~Section 8. Response by Custodial Judge. If a custodian determines there is a question~~
209 ~~as to whether a record should be disclosed, or if a written request is made for a ruling by a~~
210 ~~judge after the custodian denies or grants the request, the custodian shall refer the request to~~
211 ~~the custodial judge for determination. The custodial judge shall make a written determination~~
212 ~~as promptly as possible as to whether the record should be disclosed. In the sole discretion~~
213 ~~of the custodial judge, an informal hearing may be held by the judge on the question of~~
214 ~~whether the record should be disclosed. The custodial judge shall determine the time and~~
215 ~~place of the hearing and the notice to be given by the custodian to the requestor. If a hearing~~
216 ~~is held under this rule, the response to the requestor may be delayed a reasonable time after~~
217 ~~the conclusion of the hearing.~~

218 ~~Section 9. Motion Regarding Sealing of Records. Any person, or the court on its own~~
219 ~~motion, may move, in the judicial proceeding in which records are filed, to seal or unseal a~~
220 ~~part or all of the records in the proceeding. The custodial judge shall hear the motion after~~

221 ~~the moving party gives notice of the hearing to all parties to the proceeding and any other~~
222 ~~person designated by the judge. The custodial judge shall issue a written decision on the~~
223 ~~motion to seal or unseal records, which the court may reconsider, alter, or amend at any time.~~
224 ~~A record that is the subject of a motion to seal is confidential until a written decision on the~~
225 ~~motion is issued.~~

226 ~~Section 10. Review of Decision on Access, Sealing, or Unsealing. If a custodian~~
227 ~~denies or grants a request for the examination or copying of a record under Section 7, the~~
228 ~~requestor may file a request for a ruling by the custodial judge. If the custodial judge denies~~
229 ~~or grants a request for the examination or copying of a record under Section 8, the sole~~
230 ~~remedy of the requestor is to institute a proceeding in district court.~~

231 ~~Section 11. Status of Records on Appeal. The status of a record transmitted to the~~
232 ~~Supreme Court on appeal continues unless the Supreme Court orders otherwise.~~

233 ~~Section 12. Cost of Copying Records. The custodian or custodial judge shall~~
234 ~~determine the cost to be charged to a person requesting a copy of a record.~~

235 ~~Section 13. Application. This rule applies to all judicial records existing on or after~~
236 ~~the date of adoption of this rule.~~

237 ~~(3)~~ This rule does not preclude access to records by the following persons in the
238 following situations:

239 ~~(1A)~~ Federal, state, and local officials, or their agent, examining a judicial court record
240 in the exercise of their official duties and powers.

241 ~~(2B)~~ Parties to an action and their attorneys examining the court file of the action,
242 unless restricted by order of the court. Parties and attorneys may not access judge and court

243 personnel work material in the court file.

244 (3C) Disclosure by the custodian of statistical information that is not descriptive of
245 an identifiable person.

246 (4) A member of the public may request the court to allow access to information
247 excluded under this provision as provided for in Section 5 (b)(2).

248 (b) Requests to Prohibit Public Access to Information in Court Records or to Obtain
249 Access to Restricted Information.

250 (1) Request to Prohibit Access.

251 (A) A request to prohibit public access to information in a court record may be made
252 by any party to a case, the individual about whom information is present in the court record,
253 or on the court's own motion upon notice as provided in Section 5(b)(3).

254 (B) The court must decide whether there are sufficient grounds to overcome the
255 presumption of openness of judicial records and prohibit access according to applicable
256 constitutional, statutory and common law.

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

261 (D) The closure of the records must be no broader than necessary to protect the
262 articulated interest. The court must consider reasonable alternatives to the closure such as
263 redaction or partial closure, and the court must make findings adequate to support the
264 closure. The court may not deny access only on the ground the record also contains

265 confidential or closed information.

266 (E) In restricting access the court will use the least restrictive means that will achieve
267 the purposes of the access policy and the needs of the requestor.

268 (2) Request to Obtain Access.

269 (A) A request to obtain access to information in a court record to which access is
270 prohibited under Section 5(a) or 5(b)(1) or has been denied under Section 3(b) may be made
271 by any member of the public or on the court's own motion upon notice as provided in Section
272 5(b)(3).

273 (B) In deciding whether to allow access, the court must consider whether there are
274 sufficient grounds to overcome the presumption of openness of judicial records and continue
275 to prohibit access according to applicable constitutional, statutory and common law. In
276 deciding this the court must consider the same standards as outlined in Section 5(b)(1).

277 (3) Form of Request.

278 (A) The request shall be made by a written motion to the court.

279 (B) The requestor will give notice to all parties in the case. (C) The court may
280 require notice to be given by the requestor or another party to any individuals or entities
281 identified in the information that is the subject of the request. When the request is for access
282 to information to which access was previously prohibited under Section 5(a), the court will
283 provide notice to the individual or entity that requested that access be prohibited either itself
284 or by directing a party to give the notice.

285 Section 6. When Court Records May Be Accessed.

286 (a) Court records will be available for public access in the courthouse during normal

287 business hours. Court records in electronic form to which the court allows remote access
288 under this policy will be available for access subject to technical systems availability.

289 (b) Upon receiving a request for access to information the court will respond within
290 a reasonable time regarding the availability of the information and provide the information
291 within a reasonable time.

292 Section 7. Fees for Access. The court may charge a fee for access to court records in
293 electronic form, for remote access, or for bulk distribution or compiled information. To the
294 extent that public access to information is provided exclusively through a vendor, the court
295 will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

296 Section 8. Obligations Of Vendors Providing Information Technology Support To A
297 Court To Maintain Court Records.

298 (a) If the court contracts with a vendor to provide information technology support to
299 gather, store, or make accessible court records, the contract will require the vendor to comply
300 with the intent and provisions of this access policy. For purposes of this section, “vendor”
301 includes a state, county or local governmental agency that provides information technology
302 services to a court.

303 (b) By contract the vendor will be required to notify the court of any requests for
304 compiled information or bulk distribution of information, including the vendor’s requests for
305 such information for its own use.

306 Adopted on an emergency basis effective October 1, 1996; Amended and adopted
307 effective November 12, 1997; March 1, 2001_____; Appendix amended
308 effective August 1, 2001, to reflect the name change of State Bar Board to State Board of Law

309 Examiners.

310 SOURCE: Conference of Chief Justices/Conference of State Court Administrators:
311 Guidelines for Public Access to Court Records.

312

313 APPENDIX

314 Statutes, court rules and policies, and federal regulations making certain records
315 confidential, in whole or in part, include:

316 ND Century Code

317 12.1-32-07.2(2) Records and papers concerning deferred imposition of sentence
318 when guilty plea is withdrawn or guilty verdict set aside

319 12.1-32-09(3) Notice specifying defendant as a dangerous special offender for
320 sentencing purposes

321 12.1-35-03 Information identifying a child victim of a crime

322 14-02.1-03.1(3), (4), (11) Records involving judicial authorization for abortion for
323 unmarried minor

324 14-09.1-06 Mediation proceedings concerning contested child support, custody, or
325 visitation

326 14-15-16(4) Adoption proceedings

327 14-17-19 Paternity proceedings

328 23-07.6-11 Confinement proceedings for those with communicable diseases

329 23-02.1-27 Certain information in birth and death certificates

330 25-03.1-43 Mental health commitments

331 ~~25-03.3-03 Commitment proceedings for sexually dangerous individuals~~

332 27-20-51 Juvenile court records

333 27-09.1-12(4) Jury selection records

334 29-10.1-30, -31 Grand jury proceedings

335 30.1-11-01 Wills deposited for safekeeping

336 37-01-34 Recorded military discharge papers

337 50-06-05.1(15) Social-psychological evaluations and predisposition reports

338 provided by department of human services

339 Court Rules and Policies

340 N.D.R,Civ.P. 26(c) Protective orders

341 N.D.R.Crim.P. 32(c) Presentence investigation reports

342 N.D.R.Crim.P. 44(b) Ex parte application for financial assistance

343 Administrative Rule 40 Audiotapes of closed or confidential proceedings

344 Administrative Policy 215 Access to computer-based data

345 Administrative Policy 402 Access to Juvenile Court Records

346 Federal Regulations

347 22 C.F.R. Section 51.33 Passport records

348 Boards and commissions governed by rules adopted by the Supreme Court include:

349 Commission for Continuing Legal Education; Disciplinary Board; Judicial Conduct

350 Commission, State Board of Law Examiners.