

RULE ____. ACCESS TO COURT RECORDS

Section 1. Purpose.

~~(a) The purpose of this rule is to provide a comprehensive framework for a policy on public access to court records. This rule provides for access in a manner that:~~

- ~~(1) maximizes accessibility to court records,~~
- ~~(2) supports the role of the judiciary,~~
- ~~(3) promotes governmental accountability,~~
- ~~(4) contributes to public safety,~~
- ~~(5) minimizes risk of injury to individuals,~~
- ~~(6) protects individual privacy rights and interests,~~
- ~~(7) protects proprietary business information,~~
- ~~(8) minimizes reluctance to use the court to resolve disputes,~~
- ~~(9) makes most effective use of court and clerk of court staff,~~
- ~~(10) provides excellent customer service, and~~
- ~~(11) does not unduly burden the ongoing business of the judiciary.~~

~~(b) This rule is intended to provide guidance to:~~

- ~~(1) litigants,~~
- ~~(2) those seeking access to court records, and~~
- ~~(3) judges and court and clerk of court personnel responding to requests for access.~~

22 ~~Section 2. Who Has Access to Court Records.~~ Every member of the public will have
23 the same access to court records as provided in this rule, ~~except as provided in Sections~~
24 ~~4(c)(2) and 4(d)(2).~~

25 ~~(a) “Public” includes:~~

26 ~~(1) any person and any business or non-profit entity, organization or association;~~

27 ~~(2) any governmental agency for which there is no existing policy defining the~~
28 ~~agency’s access to court records;~~

29 ~~(3) media organizations; and~~

30 ~~(4) entities that gather and disseminate information for whatever reason, regardless~~
31 ~~of whether it is done with the intent of making a profit, and without distinction as to nature~~
32 ~~or extent of access.~~

33 ~~(b) “Public” does not include:~~

34 ~~(1) court personnel;~~

35 ~~(2) people or entities, private or governmental, who assist the court in providing court~~
36 ~~services;~~

37 ~~(3) public agencies whose access to court records is defined by another statute, rule,~~
38 ~~order or policy; and~~

39 ~~(4) the parties to a case or their lawyers regarding access to the court record in their~~
40 ~~case.~~

41 Section ~~3~~2. Definitions.

42 ~~(a) Definition Of Court Record.~~ For purposes of these Guidelines:

43 ~~(1)~~ “Court record,” regardless of the form, includes:

44 ~~(A1)~~ any document, information, or other thing that is collected, received, or
45 maintained by a ~~custodian, custodial court or other~~ court personnel in connection with a
46 judicial proceeding;

47 ~~(B2)~~ any index, calendar, docket, register of actions, official record of the
48 proceedings, order, decree, judgment, minute, and any information in a case management
49 system created by or prepared by a ~~custodian, custodial court or other~~ court personnel that
50 is related to a judicial proceeding; and

51 ~~(C3)~~ ~~the following~~ information maintained by a ~~custodian, custodial court or other~~
52 court personnel pertaining to the administration of the court or clerk of court office and not
53 associated with any particular case;

54 ~~(2b)~~ “Court record” does not include:

55 ~~(A1)~~ other records maintained by the public official who also serves as clerk of court;
56 ~~such as administrative records.~~

57 ~~(B2)~~ information gathered, maintained or stored by a governmental agency or other
58 entity to which the court has access but which is not part of the court record as defined in
59 ~~Section 3(a)(1)(A) this rule.~~

60 ~~(bc)~~ ~~Definition Of Public Access.~~ “Public access” means that the public may inspect
61 and obtain a copy of the information in a court record.

62 ~~(cd)~~ ~~Definition Of Remote Access.~~ “Remote access” means the ability to
63 electronically search, inspect, or copy information in a court record without the need to

64 physically visit the court facility where the court record is maintained.

65 ~~(de) Definition Of In Electronic Form. Information in a court record “in electronic~~
66 ~~“Electronic form” includes~~ means information in a court record that exists as:

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

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

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

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

73 ~~(ef) Definitions Of Other Key Terms.~~

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

75 (2) “Custodial judge” means, for any record of a judicial proceeding in a case file in
76 ~~the district~~ a court, the judge presiding in that case or the judge designated in writing by ~~the~~
77 a presiding judge of ~~the judicial district~~; and, for any record not in a case file in ~~the district~~
78 a court, a presiding judge of ~~the judicial district~~ or the judge designated in writing by ~~the a~~
79 presiding judge.

80 (3) “Personnel” means clerks, judges, and staff of a ~~district~~ court.

81 ~~Section 4. Applicability of Rule. This rule applies to all court records, regardless of~~
82 ~~the physical form of the court record, the method of recording the information in the court~~
83 ~~record or the method of storage of the information in the court record.~~

84 Section 3. Access to Court Records

85 _____(a) General Access Rule.

86 (1) Information in the court record is accessible to the public except as prohibited by
87 ~~Section 4(f) or Section 4(g)(1)~~ this rule.

88 (2) There shall be a publicly accessible indication of the existence of information in
89 a court record to which access has been prohibited, which indication shall not disclose the
90 nature of the information protected.

91 (3) A ~~local~~ court may not adopt a more restrictive access policy or otherwise restrict
92 access beyond that provided for in this policy, nor provide greater access than that provided
93 for in this policy.

94 (b) Obtaining Access To Court Records.

95 (1) Request for Court Records. Any person desiring to inspect, examine, or copy a
96 court record shall make an oral or written request to the custodian. If the request is oral, the
97 custodian may require a written request if the custodian determines that the disclosure of the
98 record is questionable or the request is so involved or lengthy as to need further definition.
99 The request must clearly identify the record requested so that the custodian can locate the
100 record without doing extensive research. Continuing requests for a document not yet in
101 existence may not be considered. A clerk of court is not required to allow access to more than
102 ten files per day per requestor but may do so in the exercise of the clerk's discretion if the
103 access will not disrupt the clerk's primary function.

104 (2) Response To Request. The custodian shall respond to the request as promptly as
105 practical. If the request for access and inspection is granted, the custodian may set reasonable

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

115 (3) Response by Custodial Judge. If a custodian determines there is a question as to
116 whether a record should be disclosed, or if a written request is made for a ruling by a judge
117 after the custodian denies or grants the request, the custodian shall refer the request to the
118 custodial judge for determination. The custodial judge shall make a written determination as
119 promptly as possible as to whether the record should be disclosed. In the sole discretion of
120 the custodial judge, an informal hearing may be held by the judge on the question of whether
121 the record should be disclosed. The custodial judge shall determine the time and place of the
122 hearing and the notice to be given by the custodian to the requestor. If a hearing is held under
123 this rule, the response to the requestor may be delayed a reasonable time after the conclusion
124 of the hearing.

125 (b)(c) Court Records In Electronic Form Presumptively Subject to Remote Access by
126 the Public. The following information in court records should be made remotely accessible

127 to the public if it exists in electronic form, unless public access is restricted pursuant to
128 ~~Sections 4(e), 4(f) or 4(g)(1)~~ this rule:

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

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

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

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

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

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

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

140 (c) Requests for Bulk Distribution of Court Records. Bulk distribution is defined as
141 the distribution of all, or a significant subset, of the information in court records, as is and
142 without modification or compilation.

143 (1) Bulk distribution of information in the court record is permitted for court records
144 that are publicly accessible under Section 4(a).

145 (2) A request for bulk distribution of information not publicly accessible can be made
146 to the court for scholarly, journalistic, political, governmental, research, evaluation or
147 statistical purposes where the identification of specific individuals is ancillary to the purpose

148 of the inquiry. Prior to the release of information pursuant to this subsection the requestor
149 must comply with the provisions of Section 4(d)(3).

150 (de) Access to Compiled Information From Court Records.

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

154 (2) Any member of the public may request compiled information that consists solely
155 of information that is publicly accessible and that is not already available pursuant to Section
156 4(b) or in an existing report. The court may compile and provide the information if it
157 determines, in its discretion, that providing the information meets criteria established by the
158 court, that the resources are available to compile the information and that it is an appropriate
159 use of public resources. The court may delegate to its staff or the clerk of court the authority
160 to make the initial determination as to whether to provide compiled information.

161 (3) Requesting compiled information.

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

165 (B) The request shall:

166 (i) identify what information is sought ,

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

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

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

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

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

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

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

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

186 ~~(e) Court Records That Are Only Publicly Accessible At A Court Facility.~~

187 ~~(1) The following information in a court record will be publicly accessible only at a~~
188 ~~court facility in the jurisdiction, unless access is prohibited pursuant to Section 4(f) or~~
189 ~~4(g)(1):~~

190 ~~(2) A request to limit public access to information in a court record to a court facility~~
191 ~~in the jurisdiction may be made by any party to a case, an individual identified in the court~~
192 ~~record, or on the court's own motion. For good cause the court will limit the manner of~~
193 ~~public access. In limiting the manner of access the court will use the least restrictive means~~
194 ~~that achieves the purposes of the access policy and the needs of the requestor.~~

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

197 (1) information that is not to be accessible to the public pursuant to federal law (~~a~~
198 ~~partial list is contained in the appendix to this rule~~);

199 (2) information that is not to be accessible to the public pursuant to state law, court
200 rule or case law, including:

201 (A) affidavits or sworn testimony and records of proceedings in support of the
202 issuance of a search or arrest warrant pending the return of the warrant;

203 (B) information in a complaint and associated arrest or search warrant to the extent
204 confidentiality is ordered by the court under Section 29-05-32 or 29-29-22, NDCC.

205 (C) documents filed with the court for in-camera examination pending disclosure;

206 (D) except for orders of the court, domestic violence protection order files and
207 disorderly conduct restraining order files when the restraining order is sought due to domestic
208 violence;

209 (E) records of paternity proceedings;

210 (F) names of qualified jurors and contents of jury qualification forms if disclosure is

211 prohibited or restricted by order of the court;

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

213 (H) judges' work material, including, but not limited to, personal calendars,
214 communications from law clerks, bench memoranda, notes, work in progress, draft
215 documents and non-finalized documents; and

216 (I) any other document or record when access is restricted by state law or court rule
217 or policy (~~a partial list is contained in the appendix to this rule~~).

218 _____(3) This rule does not preclude access to records by the following persons in the
219 following situations:

220 (A) Federal, state, and local officials, or their agent, examining a judicial record in the
221 exercise of their official duties and powers.

222 (B) Parties to an action and their attorneys examining the court file of the action,
223 unless restricted by order of the court.

224 (C) Disclosure by the custodian of statistical information that is not descriptive of an
225 identifiable person.

226 (4) A member of the public may request the court to allow access to information
227 excluded under this provision as provided for in Section 3(g)(2).

228 (g) Requests To Prohibit Public Access to Information In Court Records Or To Obtain
229 Access to Restricted Information

230 (1) A request to prohibit public access to information in a court record may be made
231 by any party to a case, the individual about whom information is present in the court record,

232 or on the court's own motion upon notice as provided in Section 3(g)(3). The court must
233 decide whether there are sufficient grounds to overcome the presumption of openness of
234 judicial records and prohibit access according to applicable constitutional, statutory and
235 common law. In deciding this the court ~~should consider at least the following:~~

- 236 ~~(A) risk of injury to individuals;~~
- 237 ~~(B) individual privacy rights and interests;~~
- 238 ~~(C) proprietary business information; and~~
- 239 ~~(D) public safety.~~

240 must consider that the presumption of openness may only be overcome by an
241 overriding interest based on findings that closure is essential to preserve higher values and is
242 narrowly tailored to serve that interest. The court must articulate this interest along with
243 specific findings sufficient to allow a reviewing court to determine whether the closure order
244 was properly entered. The closure of the records must be no broader than necessary to protect
245 the articulated interest, the court must consider reasonable alternatives to the closure such
246 as redaction or partial closure, and the court must make findings adequate to support the
247 closure. The court may not deny access only on the ground the record also contains
248 confidential or closed information.

249 In restricting access the court will use the least restrictive means that will achieve the
250 purposes of the access policy and the needs of the requestor.

251 (2) A request to obtain access to information in a court record to which access is
252 prohibited under Section 3(f) or 3(g)(1) or has been denied under Section 3(b)(3) of this rule

253 may be made by any member of the public or on the court's own motion upon notice as
254 provided in Section 3(g)(3). The court must decide whether there are sufficient grounds to
255 overcome the presumption of openness of judicial records and continue to prohibit access
256 according to applicable constitutional, statutory and common law. In deciding this the court
257 ~~should~~ must consider at least the following:

- 258 ~~(A) risk of injury to individuals;~~
- 259 ~~(B) individual privacy rights and interests;~~
- 260 ~~(C) proprietary business information;~~
- 261 ~~(D) access to court records; and~~
- 262 ~~(E) public safety.~~

263 the same standards as outlined in Section 3(g)(1).

264 (3) The request shall be made by a written motion to the court. The requestor will
265 give notice to all parties in the case ~~except as prohibited by law~~. The court shall also require
266 that notice be given to anyone who has requested notice of such motions or to any previously
267 designated person or organization to receive notice of such motions, and that the notice is
268 placed upon the court docket. The court may require notice to be given by the requestor or
269 another party to any individuals or entities identified in the information that is the subject of
270 the request. When the request is for access to information to which access was previously
271 prohibited under Section ~~4~~ 3(f)(1), the court will provide notice to the individual or entity
272 that requested that access be prohibited either itself or by directing a party to give the notice.

273 (4) The notice must be such that the public and other parties have the opportunity to

274 be heard on such motions. The opportunity to be heard must consist of at least the
275 opportunity to submit written briefs and, if requested by any party, to present oral argument.

276 Section 54. When Court Records May Be Accessed.

277 (a) Court records will be available for public access in the courthouse during normal
278 business hours established by the court. Court records in electronic form to which the court
279 allows remote access under this policy will be available for access subject to normal business
280 hours and subject to at least during the hours established by the court for courthouse access,
281 ~~subject to unexpected~~ technical failures or normal system maintenance announced in
282 advance.

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

286 Section 65. Fees for Access. The court may charge a fee for access to court records
287 in electronic form, for remote access, or for bulk distribution or compiled information. To
288 the extent that public access to information is provided exclusively through a vendor, the
289 court will ensure that any fee imposed by the vendor for the cost of providing access is
290 reasonable.

291 Section 76. Obligations Of Vendors Providing Information Technology Support To
292 A Court To Maintain Court Records.

293 (a) If the court contracts with a vendor to provide information technology support to
294 gather, store, or make accessible court records, the contract will require the vendor to comply

295 with the intent and provisions of this access policy. For purposes of this section, “vendor”
296 includes a state, county or local governmental agency that provides information technology
297 services to a court.

298 (b) By contract the vendor will be required to comply with the requirement of ~~Sections~~
299 ~~8(a), 8(b), 8(c), and 8(d)~~ this rule to educate litigants, the public, and its employees and
300 subcontractors about the provisions of the access policy.

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

304 Section 87. Information and Education Regarding Access Policy.

305 (a) Dissemination of Information to Litigants About Access To Information In Court
306 Records. The court will make information available to litigants and the public that
307 information in the court record about them is accessible to the public, including remotely and
308 how to request to restrict the manner of access or to prohibit public access.

309 (b) Dissemination of Information to the Public About Accessing Court Records. The
310 Court will develop and make information available to the public about how to obtain access
311 to court records pursuant to these Guidelines.

312 (c) Education of Judges and Court Personnel About an Access Policy. The Court and
313 clerk of court will educate and train their personnel to comply with an access policy so that
314 Court and clerk of court offices respond to requests for access to information in the court
315 record in a manner consistent with this policy. Presiding judges shall insure that all judges

316 are informed about the access policy.

317 (d) Education About Process to Change Inaccurate Information in a Court Record.

318 The Court will have a policy and will inform the public of the policy by which the court will

319 correct inaccurate information in a court record.

320 SOURCE: Conference of Chief Justices/Conference of State Court Administrators:

321 Guidelines for Public Access to Court Records.