

ORIGINAL



north dakota  
department of  
human services

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John Hoeven, Governor  
Carol K. Olson, Executive Director

October 20, 2008

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OCT 21 2008

Penny Miller  
Clerk of the Supreme Court  
600 E. Boulevard Avenue, Dept. 180  
Bismarck, ND 58505-0530

STATE OF NORTH DAKOTA

Re: Annual Rules Package – Comments to Proposed Amendments

Dear Ms. Miller:

The Child Support Enforcement division of the North Dakota Department of Human Services appreciates the opportunity to comment on the annual rules package. Our comments are limited to proposed new Rule 3.4 of the North Dakota Rules of Court.

Federal law requires states to have procedures for recording social security numbers in certain family matters. For example, states must have procedures under which the social security number of any individual who is subject to a divorce decree, support order, or paternity determination be placed in the records relating to the matter. 42 U.S.C. § 666(a)(13)(B). This federal law makes no allowance for recording a partial (i.e., redacted) social security number.

In North Dakota, the federal law is implemented through N.D.C.C. §§ 14-05-02.1 (divorce decree), 14-09-08.1 (support order), and 14-20-57(3) (paternity determination). Each statute requires that the social security number be included or incorporated in the applicable decree, order, or determination.

Currently, N.D.R.Ct. 3.1 addresses privacy protections for personal information, including social security numbers, in court filings by providing for redaction of that information. However, the rule also recognizes that there are circumstances in which nonredacted information is required to be filed. In these circumstances, the document containing the required nonredacted information is marked as confidential and a redacted copy (for public access) is also filed. N.D.R.Ct. 3.1(j)(3). While the dual filing is cumbersome, it is in harmony with state laws and with federal law. Unfortunately, this provision in N.D.R.Ct. 3.1 is proposed for deletion.

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It is my understanding that proposed N.D.R.Ct. 3.4(e) is intended to address and to accomplish the same purpose as N.D.R.Ct. 3.1(j)(3). If so, the language is problematic. It is presented as an "option" for filing under seal and provides that a person "may file" an unredacted copy. This permissive (and nonspecific) language is unlikely to put the practitioner on notice that this is the procedure to be followed when unredacted information is required to be included in a filing.

I respectfully suggest replacing proposed N.D.R.Ct. 3.4(e) with language similar to what is currently in N.D.R.Ct. 3.1(j)(3). For example:

(e) **Filing When Unredacted Information is Required.** If a party is required to include unredacted information in a document filed with the court, the party must also file a redacted copy of the document for the public record.

Or, if you want to incorporate the "under seal" concept, this language may work:

(e) **Filing Under Seal When Unredacted Information is Required.** If a party is required to include unredacted information in a document filed with the court, the document must be filed under seal. The party must also file a redacted copy of the document for the public record.

Thank you for the opportunity to comment. Feel free to contact me if you have any questions.

Sincerely,



Paulette Oberst  
Policy Administrator