

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20170045

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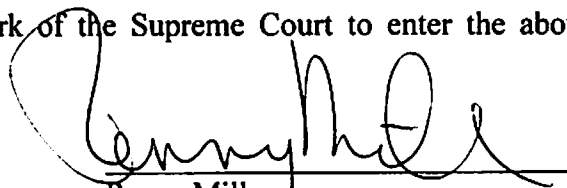
**Proposed Amendments to N.D.R.Crim.P. 15, 16 and 32; N.D.R.Juv.P. 4 and 12.1;  
N.D.R.Ct. 3.4, and N.D. Sup. Ct. Admin. R. 41**

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[¶ 1] On February 6, 2017, the Joint Procedure Committee on Attorney Standards submitted a petition to amend N.D.R.Crim.P. 15 regarding depositions, 16 regarding discovery and inspection, and 32 regarding sentencing and judgment; N.D.R.Juv.P. 4 regarding interested persons, and 12.1 regarding depositions; N.D.R.Ct. 3.4 regarding privacy protection for filing with the court; and N.D. Sup. Ct. Admin. R. 41 regarding access to court records. The Court issued a notice of comment, with comments due March 24, 2017. The proposal is available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. The Court considered the matter, and

[¶ 3] **IT IS ORDERED**, that, as amended by the Court, proposed amendments to N.D.R.Crim.P. 15, N.D.R.Crim.P. 16, N.D.R.Crim.P. 32, N.D.R.Crim.P. 4, N.D.R.Crim.P. 12.1; N.D.R.Ct. 3.4, and N.D. Sup. Ct. Admin. R. 41 are ADOPTED, effective May 1, 2017.

[¶ 4] The Supreme Court of the State of North Dakota convened the 5th day of April, 2017, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, and the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller  
Clerk  
North Dakota Supreme Court

RULE 15. DEPOSITIONS

1 (a) When Taken. At any time after the defendant has appeared, any party  
2 may take testimony of any person by deposition including audio-visual depositions  
3 taken as provided in N.D.R.Civ.P. 30.1, except:

4 (1) the defendant may not be deposed unless the defendant consents and the  
5 defendant's lawyer, if the defendant has one, is present or the defendant waives the  
6 lawyer's presence;

7 (2) a discovery deposition may be taken after the time set by the court only  
8 with leave of court;

9 (3) a deposition to perpetuate testimony may be taken only with leave of  
10 court, which must be granted upon motion of any party if it appears that the  
11 deponent may be able to give material testimony but may be unable to attend a trial  
12 or hearing; ~~and~~

13 (4) upon motion of a party or of the deponent and upon a showing that the  
14 taking of the deposition does or will unreasonably annoy, embarrass, or oppress, or  
15 cause undue burden or expense to, the deponent or a party, the court in which the  
16 prosecution is pending or a court of the jurisdiction where the deposition is being  
17 taken may order that the deposition not be taken or continued or may limit the  
18 scope and manner of its taking. Upon demand of the objecting party or deponent,  
19 the taking of the deposition may be suspended for the time necessary to make the  
20 motion; and

21           (5) a victim may refuse to participate in a deposition requested by the  
22           defendant or the defendant's attorney.

23           Attendance of witnesses and production of documentary evidence and  
24           objects may be compelled by subpoena under Rule 17.

25           (b) Witness Who Would Not Respond To Subpoena. If a party is granted  
26           leave to take a deposition to perpetuate testimony, the court, upon motion of the  
27           party and a showing of probable cause to believe that the deponent would not  
28           respond to a subpoena, by order must direct a law enforcement officer to take the  
29           deponent into custody and hold the deponent until the taking of the deposition  
30           commences but not to exceed six hours and to keep the deponent in custody during  
31           the taking of the deposition. If the motion is by the prosecuting attorney, the court,  
32           upon further motion by the prosecuting attorney and a showing of probable cause  
33           to believe the defendant would not otherwise attend the taking of the deposition,  
34           may make the same order for the defendant.

35           (c) Notice Of Taking. The party at whose instance the deposition is to be  
36           taken shall give all parties reasonable written notice of the name and address of  
37           each person to be examined, the time and place for the deposition, and the manner  
38           of recording. Upon motion of a party or of the deponent, the court may change the  
39           time, place, or manner of record.

40           (d) How Taken. The deposition must be taken in the manner provided in  
41           civil actions, except:

42           (1) if the deposition is taken at a place over which this state lacks

43 jurisdiction, it may be taken instead in the manner provided by the law of that  
44 place;

45 (2) it must be recorded by the means specified in the notice; and

46 (3) upon motion of a party and a showing that a party or the deponent is  
47 engaging in serious misconduct at the taking of a deposition, the court by order  
48 may direct that the deposition's taking be continued in the presence of a designated  
49 officer, in which case the designated officer may preside over the remainder of the  
50 deposition's taking.

51 (e) Place Of Taking. The deposition must be taken in a building where the  
52 trial may be held, at a place agreed upon by the parties, or at a place designated by  
53 special or general order of the court. If the defendant is in custody or subject to  
54 terms of release that prohibit leaving the state and does not appear before the court  
55 and understandingly and voluntarily waives the right to be present, a deposition to  
56 perpetuate testimony must not be taken at a place which requires transporting the  
57 defendant within a jurisdiction that does not confer upon law enforcement officers  
58 of this state the right to transport prisoners within it.

59 (f) Presence Of Defendant.

60 (1) At Discovery Deposition. The defendant may be present at the taking of  
61 a discovery deposition, but if the defendant is in custody, the defendant may be  
62 present only with leave of court.

63 (2) At Deposition To Perpetuate Testimony. The defendant must be present  
64 at the taking of a deposition to perpetuate testimony, but if the defendant's counsel

65 is present at the taking:

66 (A) the court may excuse the defendant from being present if the defendant  
67 appears before the court and understandingly and voluntarily waives the right to be  
68 present;

69 (B) the taking of the deposition may continue if the defendant, present when  
70 it commenced, leaves voluntarily; or

71 (C) if the deposition's taking is presided over by a judicial officer, the  
72 judicial officer may direct that the deposition's taking or part of the deposition's  
73 taking be conducted in the defendant's absence if the judicial officer has justifiably  
74 excluded the defendant because of the defendant's disruptive conduct.

75 (3) Unexcused Absence. If the defendant is not present at the  
76 commencement of the taking of a deposition to perpetuate testimony and the  
77 defendant's absence has not been excused:

78 (A) its taking may proceed, in which case the deposition may be used only  
79 as a discovery deposition; or

80 (B) if the deposition is taken at the instance of the prosecution, the  
81 prosecuting attorney may direct that the commencement of its taking be postponed  
82 until the defendant's attendance can be obtained, and the court, upon application of  
83 the prosecuting attorney, by order may direct a law enforcement officer to take the  
84 defendant into custody during the taking of the deposition.

85 (4) Taking Depositions Outside the United States Without the Defendant's  
86 Presence. The deposition of a witness who is outside the United States may be

87 taken without the defendant's presence if the court makes case-specific findings of  
88 all the following:

89 (A) the witness's testimony could provide substantial proof of a material  
90 fact in a felony prosecution;

91 (B) there is a substantial likelihood that the witness's attendance at trial  
92 cannot be obtained;

93 (C) the witness's presence for a deposition in the United States cannot be  
94 obtained;

95 (D) the defendant cannot be present because:

96 (i) the country where the witness is located will not permit the defendant to  
97 attend the deposition;

98 (ii) for an in-custody defendant, secure transportation and continuing  
99 custody cannot be assured at the witness's location; or

100 (iii) for an out-of-custody defendant, no reasonable conditions will assure  
101 an appearance at the deposition or at trial or sentencing; and

102 (E) the defendant can meaningfully participate in the deposition through  
103 reasonable means.

104 (g) Payment Of Expenses. If the deposition is taken at the instance of the  
105 prosecution, the court may, and in all cases where the defendant is unable to bear  
106 the expense the court must, direct the state to pay the expense of taking the  
107 deposition, including the reasonable expenses of travel and subsistence of defense  
108 counsel and, if the deposition is to perpetuate testimony or if the court permits for

109 a discovery deposition, of the defendant in attending the deposition.

110 (h) Substantive Use On Grounds Of Unavailability. So far as otherwise  
111 admissible under the rules of evidence, a deposition to perpetuate testimony may  
112 be used as substantive evidence at the trial or upon any hearing if the deponent is  
113 unavailable as defined in N.D.R.Ev. 804(a). A discovery deposition may then be  
114 so  
115 used if the court determines that the use is fair in light of the nature and extent of  
116 the total examination at the taking thereof, but it may be offered by the prosecution  
117 only if the defendant was present at its taking. If only a part of a deposition is  
118 offered in evidence by a party, an adverse party may require the offering of all of it  
119 that is relevant to the part offered.

119 (i) Objections To Admissibility. Objections to receiving in evidence a  
120 deposition or part of a deposition may be made as provided in civil actions.

121 (j) Deposition By Agreement Not Precluded. Nothing in this rule precludes  
122 the taking of a deposition, orally or upon written questions, or the use of a  
123 deposition, by agreement of the parties.

#### 124 EXPLANATORY NOTE

125 Rule 15 was amended, effective January 1, 1980; March 1, 1990; March 1,  
126 2006; March 1, 2016; May 1, 2017.

127 Rule 15 is substantially the same as Rule 431, Uniform Rules of Criminal  
128 Procedure (1974). Former Rule 15, effective until January 1, 1980, was an  
129 adaptation of Fed.R.Crim.P. 15. The present rule provides for a greatly expanded

130 use of depositions in criminal cases.

131 Subdivisions (a), (b), (f) and (h) were amended, effective March 1, 1990.

132 The amendments are technical in nature and no substantive change is intended.

133 Rule 15 was amended, effective March 1, 2006, in response to the  
134 December 1, 2002, revision of the Federal Rules of Criminal Procedure. The  
135 language and organization of the rule were changed to make the rule more easily  
136 understood and to make style and terminology consistent throughout the rules.

137 Subdivision (a) permits depositions to be taken to perpetuate testimony, as  
138 in the former rule, but also for discovery purposes, which was not previously  
139 provided for. Rather than requiring court approval of discovery depositions, this  
140 subdivision changes the emphasis by allowing them without court approval,  
141 subject to the right of a party or deponent to move under paragraph (4) to have a  
142 court order that the deposition be continued, not taken, or limited in scope or  
143 manner of taking. The court will set a time after which discovery depositions may  
144 not be taken without court permission. Leave of court is required for the taking of  
145 a deposition to perpetuate testimony.

146 Subdivision (a) was amended, effective March 1, 1990. The amendment  
147 was made to clarify the fact that audio-visual depositions may be taken under the  
148 rule. The amendment also provides that the method of taking audio-visual  
149 depositions is governed by N.D.R.Civ.P. 30.1.

150 Subdivision (a) was amended, effective May 1, 2017, to add a new  
151 paragraph (a)(5) providing that a victim may refuse to participate in a deposition



152 requested by the defendant or the defendant's attorney. This right is granted by  
153 N.D. Const. Art. I, § 25(1)(f). "Victim" is defined in N.D. Const. Art. I, § 25(4).

154 Subdivision (b) provides a method for securing the attendance of a  
155 deponent who would not respond to a subpoena. In addition, to ensure  
156 confrontation and the presence of the defendant required by subdivision (f)(2) to  
157 use the deposition at trial, the prosecuting attorney may move the court for an  
158 order to secure defendant's presence at the taking of a deposition.

159 Requirements for notice of the taking of a deposition are set forth in  
160 subdivision (c). The court may change the noticed time, place, or manner of  
161 recording upon motion of the deponent, as well as any party.

162 Subdivision (d) specifies that a deposition be taken in the same manner as  
163 in civil actions, with certain exceptions. Paragraph (1) covers depositions on  
164 enclaves over which the State of North Dakota lacks jurisdiction, such as Indian  
165 reservations, as well as depositions outside the physical boundaries of the state.  
166 Paragraph (2) allows depositions to be recorded by other than stenographic means,  
167 without a court order. Provision is made in paragraph (3) for a court to designate  
168 an official to preside over a deposition upon a showing of misconduct by a party or  
169 the deponent.

170 The place of taking a deposition is governed by subdivision (e). Restriction  
171 is placed on taking depositions outside of this state in situations where the  
172 defendant may not travel or be transported to the proposed location, unless the  
173 defendant waives the right to be present.

174           Subdivision (f) concerns the presence of the defendant at a deposition.  
175           Distinction is made between a discovery deposition and one to perpetuate  
176           testimony. The defendant is not required to be present at a discovery deposition,  
177           but the defendant's presence may enable the prosecution to use the deposition as  
178           substantive evidence at trial, as provided in subdivision (h). The taking of a  
179           deposition to perpetuate testimony necessitates the defendant's presence, with four  
180           exceptions: defendant is excused by the court upon an appearance and voluntary  
181           waiver of the right to be present; defendant is voluntarily absent after start of  
182           deposition; a judicial officer presiding over the deposition justifiably excludes the  
183           defendant because of the defendant's disruptive conduct; or the court allows a  
184           deposition to be taken outside the United States without the defendant's presence  
185           after making case-specific findings. No warning is expressly required before  
186           exclusion, as in Rule 43(b)(2). If the defendant is not present at a deposition to  
187           perpetuate testimony under one of the above exceptions, the defendant's counsel  
188           must be.

189           Paragraph (3) of subdivision (f) covers the situation when the defendant is  
190           not present at the start of a deposition to perpetuate testimony and has not been  
191           excused under paragraph (2). The taking may proceed as a discovery deposition or  
192           the prosecuting attorney, if the prosecuting attorney is taking the deposition, may  
193           postpone the taking and secure a court order to take the defendant into custody to  
194           assure the defendant's presence, so that the deposition will have the greater  
195           admissibility of a perpetuation deposition.

196 Paragraph (f)(4) was adopted, effective March 1, 2016, to allow a  
197 deposition to be taken outside the United States without the defendant's presence  
198 in certain specified circumstances. The provision was based on Fed.R.Crim.P.  
199 15(c)(3).

200 SOURCES: Joint Procedure Committee Minutes of January 26-27, 2017,  
201 pages 7-9; April 23-24, 2015, pages 26-27; January 27-28, 2005, page 12; April  
202 20, 1989, pages 4-5; March 24-25, 1988, pages 6-7; December 3, 1987, pages 9-10  
203 and 15; January 25-26, 1979, pages 5-7; December 7-8, 1978, pages 33-37;  
204 October 12-13, 1978, page 3; April 2- 26, 1973, pages 9-10; June 26-27, 1972,  
205 page 3; December 11-12, 1968, pages 2-24; September 26-27, 1968, pages 2-6;  
206 Rule 431, Uniform Rules of Criminal Procedure (1974).

207 STATUTES AFFECTED:

208 SUPERSEDED: N.D.C.C. ch. 31-06.

209 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 31-04.

210 CROSS REFERENCE: N.D.R.Crim.P. 17 (Subpoena); N.D.R.Crim.P. 43  
211 (Defendant's Presence); N.D.R.Civ.P. 30.1 (Uniform Audio-Visual Deposition  
212 Rule); N.D.R.Ev. 804 (Hearsay Exceptions; Declarant Unavailable).

RULE 16. DISCOVERY AND INSPECTION

1 (a) Disclosure of Evidence by Prosecuting Attorney.

2 (1) Information Subject to Disclosure.

3 (A) Statement of Defendant. Upon a defendant's written request, the  
4 prosecuting attorney must disclose to the defendant and make available for  
5 inspection, copying, or photographing all of the following:

6 (i) any relevant written or recorded statement by the defendant, if:

7 —the statement is within the prosecution's possession, custody, or control;

8 and

9 —the prosecuting attorney knows—or through due diligence could  
10 know—that the statement exists;

11 (ii) the portion of any written record containing the substance of any  
12 relevant oral statement made before or after arrest if the defendant made the  
13 statement in response to interrogation by a person the defendant knew was a  
14 government agent;

15 (iii) the defendant's recorded testimony before a grand jury relating to the  
16 charged offense; and

17 (iv) the substance of any other oral statement made by the defendant, before  
18 or after arrest, in response to interrogation by a person the defendant knew was a  
19 government agent.

20 (B) Organizational Defendant. Upon a defendant's request, if the defendant

21 is an organization such as a corporation, partnership, association, or labor union,  
22 the prosecution must disclose to the defendant any statements described in Rule  
23 16(a)(1)(A) if the prosecution contends that the person making the statement:

24 (i) was legally able to bind the defendant regarding the subject of the  
25 statement because of that person's position as the defendant's director, officer,  
26 employee, or agent; or

27 (ii) was personally involved in the alleged conduct constituting the offense  
28 and was legally able to bind the defendant regarding that conduct because of that  
29 person's position as the defendant's director, officer, employee, or agent.

30 (C) Defendant's Previous Record. Upon a defendant's written request, the  
31 prosecution must furnish the defendant with a copy of the defendant's prior  
32 criminal record, if any, that is within the prosecution's possession, custody, or  
33 control if the prosecuting attorney knows—or through due diligence could  
34 know—that the record exists.

35 (D) Documents and Objects. Upon a defendant's written request, the  
36 prosecuting attorney must permit the defendant to inspect and to copy or  
37 photograph books, papers, documents, data, photographs, tangible objects,  
38 buildings, or places, or copies or portions of any of these items, if the item is  
39 within the prosecution's possession, custody, or control, and:

40 (i) the item is material to preparing the defense;

41 (ii) the prosecution intends to use the item in its case-in-chief at trial; or

42 (iii) the item was obtained from or belongs to the defendant.

43 (E) Reports of Examinations and Tests. Upon a defendant's written request,  
44 the prosecuting attorney must permit a defendant to inspect and to copy or  
45 photograph the results or reports of any physical or mental examinations, and of  
46 any scientific tests or experiments if:

47 (i) the item is within the prosecution's possession, custody, or control;

48 (ii) the prosecuting attorney knows—or through due diligence could  
49 know—that the item exists; and

50 (iii) the item is material to preparing the defense or the prosecution intends  
51 to use the item in its case-in-chief at the trial.

52 (F) Expert Witnesses. Upon a defendant's written request, the prosecution  
53 must give to the defendant a written summary of any testimony that the  
54 prosecution intends to use under N.D.R.Ev. 702, 703, or 705 during its  
55 case-in-chief at trial. If the prosecution requests discovery under Rule  
56 16(b)(1)(C)(ii) and the defendant complies, the prosecution must, upon the  
57 defendant's written request, give to the defendant a written summary of testimony  
58 that the government intends to use under N.D.R.Ev. 702, 703, or 705 as evidence  
59 at trial on the issue of the defendant's mental condition. Expert witness summaries  
60 must describe the witness's opinions, the bases and reasons for those opinions, and  
61 the witness's qualifications.

62 (2) Information Not Subject to Disclosure. Except as Rule 16(a)(1) provides  
63 otherwise, this rule does not authorize the discovery or inspection of reports,  
64 memoranda, or other internal prosecution documents made by an attorney for the

65 prosecution or other prosecution agent in connection with investigating or  
66 prosecuting the case. Nor does this rule authorize the discovery or inspection of  
67 statements made by prosecution witnesses or prospective prosecution witnesses  
68 (other than the defendant) to agents of the prosecution except as provided in Rule  
69 16 (f).

70 (b) Defendant's Disclosure.

71 (1) Information Subject to Disclosure.

72 (A) Documents and Objects. If a defendant, in writing, requests disclosure  
73 under Rule 16 (a)(1)(~~C~~) or (D), and the prosecution complies, then the defendant,  
74 upon written request of the prosecution, must permit the prosecution to inspect and  
75 to copy or photograph books, papers, documents, data, photographs, tangible  
76 objects, buildings or places, or copies or portions of any of these items if:

77 (i) the item is within the defendant's possession, custody, or control; and

78 (ii) the defendant intends to use the item in the defendant's case-in-chief at  
79 trial.

80 (B) Reports of Examinations and Tests. If a defendant, in writing, requests  
81 disclosure under Rule 16(a)(1)(~~C~~) or (~~D~~) (E) and the prosecution complies, the  
82 defendant, upon written request of the prosecution, must permit the prosecution to  
83 inspect and to copy or photograph the results or reports of any physical or mental  
84 examination and of any scientific test or experiment if:

85 (i) the item is within the defendant's possession, custody, or control; and

86 (ii) the defendant intends to use the item in the defendant's case-in-chief at

87 trial or intends to call the witness who prepared the report and the report relates to  
88 the witness's testimony.

89 (C) Expert Witnesses. The defendant must, upon written request of the  
90 prosecution, give to the prosecution a written statement of any testimony that the  
91 defendant intends to use under N.D.R.Ev. 702, 703, or 705 as evidence at trial, if:

92 (i) the defendant requests disclosure under Rule 16(a)(1)(E) and the  
93 prosecution complies; or

94 (ii) the defendant has given notice under Rule 12.2(b) of an intent to present  
95 expert testimony on the defendant's mental condition.

96 This summary must describe the witness's opinions, the bases and reasons  
97 for these opinions, and the witness's qualifications.

98 (2) Information not Subject to Disclosure. Except for scientific or medical  
99 reports, Rule 16(b) does not authorize the discovery or inspection of reports,  
100 memoranda, or other documents made by the defendant or the defendant's attorney  
101 or agent during the case's investigation or defense or of statements made to the  
102 defendant, or the defendant's attorney or agent, by the defendant, a prosecution or  
103 defense witness, or a prospective prosecution or defense witness.

104 (c) Continuing Duty to Disclose. A party who discovers additional evidence  
105 or material before or during trial must promptly disclose its existence to the other  
106 party or the court if:

107 (1) the evidence or material is subject to discovery or inspection under this  
108 rule; and



109 (2) the other party previously requested, or the court ordered, its production.

110 (d) Regulating Discovery.

111 (1) Protective and Modifying Orders. At any time the court may, for good  
112 cause, deny, restrict, or defer discovery or inspection, or grant other appropriate  
113 relief. Upon motion, the court may permit a party to show good cause by a written  
114 statement that the court will inspect in camera. If relief is granted following a  
115 showing in camera, the court must preserve the entire text of the party's statement  
116 under seal.

117 (2) Failure to Comply. If a party fails to comply with this rule or with an  
118 order issued under this rule, the court may:

119 (i) order that party to permit the discovery or inspection: specify its time,  
120 place and manner; and prescribe other just terms and conditions;

121 (ii) grant a continuance ;

122 (iii) prohibit that party from introducing the undisclosed evidence;

123 (iv) relieve the requesting party from making a disclosure required by this  
124 rule; or

125 (v) enter any other order that is just under the circumstances.

126 (e) Alibi Witnesses. Discovery of alibi witnesses is governed by Rule 12.1.

127 (f) Demands for Production of Names, Addresses, and Statements of  
128 Witnesses; Statements of Codefendants; Statements of Other Persons.

129 (1) Names, Addresses, and Statements of Prosecution Witnesses. Upon a  
130 defendant's written request, the prosecution must furnish the defendant:

131 (A) a written list of the names and addresses of all prosecution witnesses  
132 whom the prosecution intends to call during its case-in-chief;  
133 (B) any statements made by the listed prosecution witnesses; and  
134 (C) any records of prior criminal convictions of the listed prosecution  
135 witnesses that the prosecuting attorney knows—or by the exercise of due diligence  
136 could know—to exist.

137 A prosecutor may not disclose victim contact information, including the  
138 address of a victim, if the victim has requested nondisclosure. If a defendant makes  
139 a written request for discovery of the names, addresses, and statements of  
140 witnesses, the prosecuting attorney must be allowed to perpetuate the testimony of  
141 those witnesses under Rule 15.

142 (2) Statements of Codefendants. Upon a defendant's written request the  
143 prosecution must permit the defendant to inspect and to copy or photograph any  
144 relevant written or recorded confession, admission, or statement of a codefendant,  
145 or copies of any of these items if:

146 (A) the item is within the prosecution's possession, custody, or control; and

147 (B) the prosecuting attorney knows—or through due diligence could

148 know—that the item exists.(3) Statements of Other Persons. Upon a defendant's

149 written request, the prosecution must permit the defendant to inspect and to copy

150 or photograph any relevant written or recorded statement of any person if:

151 (A) the statement is within the prosecution's possession, custody, or control;

152 (B) the prosecuting attorney knows—or through the exercise of due

153 diligence could know—that the statement exists; and

154 (C) the statement is not available to the defendant under Rule 16(a) or  
155 16(f)(1) and (2).

156 (4) The term "statement," as used in Rule 16(f) means:

157 (A) a written statement made by the witness, codefendant, or other person  
158 and signed or otherwise adopted by the declarant; or

159 (B) a stenographic, mechanical, electronic, or other record, or a  
160 transcription of a record, which is a substantially verbatim recital of an oral  
161 statement made by the witness, codefendant, or other person to an agent of the  
162 prosecution and recorded contemporaneously with the making of the oral  
163 statement.

164 EXPLANATORY NOTE

165 Rule 16 was amended, effective September 1, 1983; March 1, 1990; March  
166 1, 1994; March 1, 1997; March 1, 2006; May 1, 2017.

167 Prior to the adoption of this rule, discovery proceeded on an informal basis.  
168 The only requirement placed upon the prosecutor was the constitutional imperative  
169 that the suppression by the prosecution of evidence favorable to an accused upon  
170 request violates due process where the evidence is material either to the guilt or  
171 punishment, irrespective of the good faith or bad faith of the prosecution.

172 While the rule, as amended, provides greater discovery, it is intended to  
173 prescribe only the minimum amount of discovery to which the parties are entitled.

174 It is not intended to limit the judge's discretion to order broader discovery in

175 appropriate cases. Nor is it intended to prevent the voluntary disclosure of other  
176 evidence or material by the parties at any time.

177 Rule 16 was amended, effective March 1, 2006, in response to the  
178 December 1, 2002, revision of the Federal Rules of Criminal Procedure. The  
179 language and organization of the rule were changed to make the rule more easily  
180 understood and to make style and terminology consistent throughout the rules.

181 Subdivision (a)(1)(A) was amended, effective March 1, 1994, in response to  
182 the 1991 federal amendment. The amendment to North Dakota's rule requires the  
183 prosecution, upon written request, to disclose that portion of any written record  
184 containing the substance of any oral statement made by the defendant in response  
185 to interrogation by any person then known to the defendant to be an agent of the  
186 government. The amendment also requires the prosecution, upon written request,  
187 to disclose the substance of any oral statement made by the defendant in response  
188 to interrogation by any person then known by the defendant to be an agent of the  
189 government.

190 Unlike the federal rule, North Dakota's rule does not allow the government  
191 to assess whether a written record containing the substance of an oral statement, or  
192 the substance of an oral statement, is relevant. The written record containing the  
193 substance of any oral statement, or the substance of any oral statement, must be  
194 disclosed regardless of whether the prosecution considers the oral statement  
195 relevant, and regardless of whether the prosecution intends to use the oral  
196 statement.

197           Subparagraphs (a)(1)(E) and (b)(1)(C) were adopted, effective March 1,  
198           2006. These provisions set conditions for reciprocal disclosure by the prosecution  
199           and defendant of proposed expert witness testimony.

200           Subdivision (f) was adopted, effective September 1, 1983. The provisions  
201           were drawn from Rules 421 and 422, Uniform Rules of Criminal Procedure  
202           (1974); Standard 11-2.1, American Bar Association Standards for Criminal Justice  
203           (2d ed. 1980); and Fed.R.Crim.P. 16's provision requiring disclosure of expert  
204           witness information.

205           Subdivision (f) does not require, as did former subdivision (i), that the  
206           person whose statement is produced must first have testified on direct examination.  
207           It is intended that the listed statements be discoverable at any point in the  
208           proceedings.

209           Subdivision (f) was amended, effective May 1, 2017, to bar a  
210           prosecutor from disclosing contact information of a victim if the victim has  
211           requested nondisclosure under N.D. Const. Art. I, § 25(1)(e). "Victim" is defined  
212           in N.D. Const. Art. I, § 25(4).

213           ~~Subdivision (a)(1)(A) was amended, effective March 1, 1994, in response to~~  
214           ~~the 1991 federal amendment. The amendment to North Dakota's rule requires the~~  
215           ~~prosecution, upon written request, to disclose that portion of any written record~~  
216           ~~containing the substance of any oral statement made by the defendant in response~~  
217           ~~to interrogation by any person then known to the defendant to be an agent of the~~  
218           ~~government. The amendment also requires the prosecution, upon written request,~~

219 to disclose the substance of any oral statement made by the defendant in response  
220 to interrogation by any person then known by the defendant to be an agent of the  
221 government.

222 Unlike the federal rule, North Dakota's rule does not allow the government  
223 to assess whether a written record containing the substance of an oral statement, or  
224 the substance of an oral statement, is relevant. The written record containing the  
225 substance of any oral statement, or the substance of any oral statement, must be  
226 disclosed regardless of whether the prosecution considers the oral statement  
227 relevant, and regardless of whether the prosecution intends to use the oral  
228 statement.

229 Subparagraphs (a)(1)(E) and (b)(1)(C) were adopted, effective March 1,  
230 2006. These provisions set conditions for reciprocal disclosure by the prosecution  
231 and defendant of proposed expert witness testimony.

232 SOURCES: Joint Procedure Committee Minutes of January 26-27, 2017,  
233 pages 9-10; January 27-28, 2005, pages 12-13; April 25, 1996, page 15; January  
234 25-26, 1996, pages 22-23; April 27-28, 1995, pages 2-3; September 29-30, 1994,  
235 pages 7-9; April 28-29, 1994, pages 12-14; April 29-30, 1993, pages 10-11;  
236 January 28-29, 1993, pages 12-13; April 20, 1989, page 4; December 3, 1987,  
page  
237 15; February 17-18, 1983, pages 5-11; November 18-19, 1982, pages 5-10;  
238 September 30-October 1, 1982, pages 3-6; April 15-16, 1982, page 1; December  
239 7-8, 1978, pages 9-13; October 12-13, 1978, pages 3-8; September 27, 1974, page

240 4; October 17-20, 1972, pages 1-2; June 26-27, 1972, pages 9-14; December  
241 11-12, 1968, pages 4-13; Fed.R.Crim.P. 16.

242 STATUTES AFFECTED: ~~None.~~

243 CONSIDERED: N.D. Const. Art. I, § 25.

244 CROSS REFERENCE: N.D.R.Crim.P. 12.1 (Notice of Alibi Defense);  
245 N.D.R.Crim.P. 17.1 (Omnibus Hearing and Pretrial Conference); N.D.R.Ev. 612  
246 (Writing or Object Used to Refresh Memory); N.D.R.Ev. 702 (Testimony by  
247 Experts); N.D.R.Ev. 703 (Bases of Opinion Testimony by Experts); N.D.R.Ev. 705  
248 (Disclosure of Facts or Data Underlying Expert Opinion). See also: N.D.C.C. ch.  
249 29-10.1 (Grand Jury); N.D.C.C. ch.29-10.2 (State Grand Jury).

RULE 32. SENTENCING AND JUDGMENT

1 (a) Sentence.

2 (1) Time of Sentencing. The court must impose sentence or other authorized  
3 disposition without unnecessary delay. Until disposition, the court may continue or  
4 alter bail or require the defendant to be held without bail.

5 (2) Presentence Requirements. Before imposing sentence, the court must:

6 (A) determine whether the defendant and the defendant's counsel had an  
7 opportunity to read and discuss the presentence investigation report, if made  
8 available under Rule 32(c)(4)(B), or a summary made available under Rule  
9 32(c)(4)(D);

10 (B) give counsel an opportunity to speak on behalf of the defendant; and

11 (C) determine whether the defendant wishes to make a statement on the  
12 defendant's own behalf or wishes to present information in mitigation of  
13 punishment or information that would require the court to withhold judgment and  
14 sentence.

15 The court must give the prosecution an opportunity to be heard on any  
16 matter material to the imposition of sentence.

17 (3) Notification of Right to Appeal. After imposing sentence in a case that  
18 has gone to trial, the court must advise the defendant of the defendant's right to  
19 appeal and of the right of a person who is unable to pay the costs of an appeal to  
20 apply for appointment of counsel for purposes of appeal. The court is under no



21 duty to advise the defendant of any right of appeal when sentence is imposed  
22 following a plea of guilty.

23 (b) Judgment. A judgment of conviction must include the plea, the verdict,  
24 and the sentence imposed. If the defendant is found not guilty or for any reason is  
25 entitled to be discharged, the court must enter judgment accordingly. The judge  
26 must sign and the clerk must enter the judgment.

27 (c) Presentence Investigation.

28 (1) When Made. The court may order a presentence investigation and report  
29 at any time. Except when the defendant consents in writing, the report may not be  
30 submitted to the court or its contents disclosed unless the defendant has pleaded  
31 guilty or has been found guilty.

32 (2) Presence of Counsel. The defendant's counsel is entitled to notice and a  
33 reasonable opportunity to attend any interview of the defendant conducted by  
34 parole and probation staff in the course of a presentence investigation.

35 (3) Report.

36 (A) Contents of Report. The presentence report may contain the defendant's  
37 previous criminal record and information about the defendant's characteristics,  
38 including:

39 (i) family, educational, and social history;

40 (ii) employment history and financial condition;

41 (iii) circumstances affecting the defendant's behavior that may be helpful in  
42 imposing sentence or in the correctional treatment of the defendant; and

43 (iv) any information required by the court.

44 (B) Information Excluded from Report. The following types of information  
45 may not be included in a presentence report, but may be submitted to the court as  
46 an addendum to the report:

47 (i) any diagnostic or prognostic opinion that, if disclosed, might seriously  
48 disrupt a program of rehabilitation;

49 (ii) information or sources of information obtained confidentially, but  
50 subject to disclosure by the court as provided in Rule 32(c)(4)(A);

51 (iii) any sentence recommendation by parole and probation staff or the  
52 victim;

53 (iv) any victim impact statement; or

54 (v) any other information, including medical, psychiatric, or psychological  
55 information, information relating to the victim or victims, and other matters the  
56 court may consider confidential, that if disclosed, might result in harm, physical or  
57 otherwise, to the defendant, to a victim, or to other persons.

58 (4) Disclosure of Presentence Report.

59 (A) Confidentiality. The presentence report and any addendum are  
60 confidential. Neither the public nor the parties may read or copy the presentence  
61 report or any addendum, unless the court, in its discretion, gives permission.

62 (B) Disclosure to Defendant. If the court allows the defendant to examine  
63 any part of the presentence report or any addendum, this disclosure must be made  
64 at least 14 days before sentence is imposed, unless the defendant waives the

65 14-day requirement. The court must provide the defendant and the defendant's  
66 counsel a copy of the disclosed material and give them an opportunity to comment.  
67 The court may allow the defendant and the defendant's counsel to introduce  
68 testimony or other information relating to any alleged factual inaccuracy in the  
69 disclosed material. Any material disclosed to the defendant and the defendant's  
70 counsel must also be disclosed to the prosecuting attorney who must disclose it to  
71 the victim if requested to do so. Material from a presentence report and any  
72 addendum disclosed under this provision must remain confidential and may not be  
73 read or copied by anyone else except as allowed by Rule 32(c) or federal law.

74 (C) Disclosure to Attorney General. The court may disclose the presentence  
75 report and any addendum to the Attorney General or the Attorney General's  
76 designee only for purposes of the individual risk assessment required by N.D.C.C.  
77 § 12.1-32-15 (12) and (13). A presentence report and addendum disclosed to the  
78 Attorney General or the Attorney General's designee must remain confidential and  
79 may not be read or copied by anyone else except as allowed by Rule 32(c) or  
80 federal law.

81 (D) Disclosure to Department of Corrections and Rehabilitation. The  
82 presentence report and any addendum is available to the Department of  
83 Corrections and Rehabilitation for use in providing assessment and treatment  
84 services to the person when in the Department's custody, on parole from the  
85 Department, or under the supervision and management of the Department. The  
86 Department may share the presentence report and any addendum with a public

87 treatment or transition facility or licensed private treatment or transition facility  
88 providing assessment and treatment services to the person when in the  
89 Department's custody, on parole from the Department, or under the supervision  
90 and management of the Department. The Department may share the presentence  
91 report and any addendum with the compact administrator of a supervising state in  
92 accordance with the Interstate Compact for Adult Offender Supervision, N.D.C.C.  
93 ch. 12-65. A presentence report and any addendum disclosed under this provision  
94 must remain confidential and may not be read or copied by anyone else except as  
95 allowed by Rule 32(c) or federal law.

96 (E) Harmful Information. If the court finds there is information in the  
97 presentence report or any addendum that would be harmful to the defendant or to  
98 other persons if disclosed, the court must not permit the public or the parties to  
99 read or copy that portion of the report or the addendum. The court must give an  
100 oral or written summary of any non-disclosed information it will rely on in  
101 determining sentence and must give the defendant or the defendant's counsel an  
102 opportunity to comment. The court may give its summary to the parties in camera.

103 (F) Defendant's Comments. If the comments of the defendant and the  
104 defendant's counsel, or testimony or other information introduced by them, allege  
105 any factual inaccuracy in the presentence report or any addendum, or in any of the  
106 information summarized, the court, for each matter controverted, must:

107 (i) make a finding on the allegation, or

108 (ii) make a determination that no finding is necessary because the matter

109 controverted will not be taken into account in sentencing.

110 A written record of the court's findings and determinations must be  
111 appended to and accompany any copy of the presentence report later made  
112 available to the parole board or the pardon clerk.

113 (d) [Transferred]

114 (e) Probation. After conviction of an offense, the defendant may be placed  
115 on probation as provided by law.

116 (f) Revocation of Probation When Court Retains Jurisdiction Under Law.

117 (1) Taking into Custody. If there is probable cause to believe a probationer  
118 has violated a condition of probation, the court that originally placed the  
119 probationer on probation may conduct a hearing on the alleged violation. Any state  
120 parole and probation officer or any peace officer directed by a state parole and  
121 probation officer or directed by an order of the court having jurisdiction may take  
122 the probationer into custody and bring the probationer before the court. Costs  
123 incurred in bringing the probationer before the court must be borne by the county  
124 in which the probation was granted. The probationer may be admitted to bail  
125 pending the hearing.

126 (2) Transfer. If the probationer does not contest the violation, the hearing  
127 may be transferred, under the procedure set out in Rule 20, to the county where the  
128 probationer is arrested, held or present. This procedure is available only upon the  
129 consent of the court that placed the probationer on probation.

130 (3) Hearing.

131 (A) In General. The hearing must be in open court with:  
132 (i) the probationer present;  
133 (ii) a prior written notice of the alleged violation given to the probationer;  
134 and  
135 (iii) representation by retained or appointed counsel unless waived.

136 The probationer must be given an opportunity to make a statement and  
137 present evidence in mitigation.

138 (B) Resolution. If the probationer contests the violation, the prosecution  
139 must establish the violation by a preponderance of the evidence. After the hearing  
140 and subject to limitations imposed by law, the court may:

141 (i) revoke an order suspending a sentence or an order suspending the  
142 imposition of sentence; or

143 (ii) continue probation on the same or different conditions.

144 A record of the proceedings must be made.

#### 145 EXPLANATORY NOTE

146 Rule 32 was amended, effective January 1, 1980; March 1, 1986; March 1,  
147 1990; March 1, 1992, on an emergency basis; July 14, 1993; March 1, 1999;  
148 October 31, 2001, on an emergency basis; April 1, 2002; March 1, 2006; March 1,  
149 2007; March 1, 2008; March 1, 2010; March 1, 2011; May 1, 2017.

150 Rule 32 was amended, effective March 1, 2006, in response to the  
151 December 1, 2002, revision of the Federal Rules of Criminal Procedure. The  
152 language and organization of the rule were changed to make the rule more easily

153 understood and to make style and terminology consistent throughout the rules.

154 Paragraph (c)(4) was amended, effective March 1, 1999, to allow the court  
155 to decide, in its discretion, whether a presentence investigation report and any  
156 addendum may be inspected by the public or the parties.

157 Parole and probation staff conducting a presentence investigation must be  
158 mindful that they cannot make a binding promise of complete confidentiality  
159 regarding information included in the addendum to a presentence report. Under  
160 paragraph (c)(4), the promise of confidentiality is subject to the court's discretion  
161 to allow the parties to inspect the addendum.

162 Paragraph (c)(4) was amended, effective October 31, 2001, to allow  
163 disclosure of the presentence report and any addendum to the Attorney General or  
164 the Attorney General's designee to enable the Attorney General to comply with  
165 subsections 12 and 13 of N.D.C.C. § 12.1-32-15. Disclosure to the Attorney  
166 General or the Attorney General's designee must comply with all applicable state  
167 and federal statutes, rules and regulations governing drug and alcohol records, and  
168 private medical information.

169 Paragraph (c)(4) was amended, effective March 1, 2008, to allow disclosure  
170 of the presentence report and any addendum to the Department of Corrections and  
171 Rehabilitation or its designees so that the Department can obtain assessment and  
172 treatment services. Disclosure to the Department or its designees must comply  
with

173 all applicable state and federal statutes, rules and regulations governing drug and

174 alcohol records, and private medical information.

175 Subparagraph (c)(4)(B) was amended, effective March 1, 2011, to change  
176 the time to disclose a presentence report from 10 to 14 days before sentence is  
177 imposed.

178 Subparagraph (c)(4)(B) was amended, effective May 1, 2017, to allow  
179 the prosecutor to disclose to the victim, on request, any material from the  
180 presentence report disclosed to the defendant and the defendant's counsel.  
181 “Victim” is defined in N.D. Const. Art. I, § 25(4).

182 Subdivision (d) on withdrawal of guilty pleas was transferred to Rule 11  
183 effective March 1, 2010.

184 Paragraph (f)(2) was added, effective March 1, 2006, to allow transfer of a  
185 revocation hearing to the county where the probationer is present. Rule 20  
186 (Transfer from the County for Plea and Sentence) sets out the procedure for  
187 obtaining a transfer.

188 Paragraph (f)(3) is adapted in part from the A.B.A. Standards for Criminal  
189 Justice, Standards Relating to Probation, § 5.4 at 65 (Approved Draft, 1970).

190 Paragraph (f)(3) was amended, effective, March 1, 2007, to clarify that a  
191 probationer must be given the opportunity to make a statement and present  
192 mitigating information at a revocation hearing.

193 SOURCES: Joint Procedure Committee Minutes of January 26-27, 2017,  
194 pages 11-14; April 29-30, 2010, page 20; January 29-30, 2009, pages 11-13,  
195 19-20; January 24, 2008; January 26, 2006, page 9; April 28-29, 2005, pages 3-5;



196 January 27-28, 2005, pages 28-29; January 24-25, 2002, pages 9-14; January  
197 29-30, 1998, pages 10-11; September 25-26, 1997, pages 3-6; January 30, 1997,  
198 pages 2-6; September 26-27, 1996, pages 6-8; April 25, 1996, pages 16-18;  
199 November 7-8, 1991, page 4; October 25-26, 1990, pages 15-16; April 20, 1989,  
200 page 4; December 3, 1987, page 15; November 29, 1984, pages 15-18; April 26,  
201 1984, page 6; December 7-8, 1978, pages 15-23; October 12-13, 1978, pages  
202 10-14; December 11-15, 1972, pages 5-16; November 20-21, 1969, pages 5-6;  
203 May 15-16, 1969, pages 1-2; February 20-21, 1969, pages 5-14; Fed.R.Crim.P.  
204 32.

205 STATUTES AFFECTED:

206 SUPERSEDED: N.D.C.C. §§ 12-53-15, 29-14-22, 29-26-01, 29-26-02,  
207 29-26-15, 29-26-19, 33-12-26, 33-12-27, 33-12-29.

208 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. §§ 1-01-41, 12-53-03,  
209 12-53-04, 12-53-05, 12-53-06, 12-53-10, 12-53-11, 12-53-12, 12-53-13, 12-53-14,  
210 12-53-17, 12-53-20, 12-55-30, 29-26-03, 29-26-11, 29-26-12, 29-26-13, 29-26-14,  
211 29-26-16, 29-26-17, 29-26-18, 29-26-20, 29-26-23, 33-12-28.

212 CROSS REFERENCE: N.D.R.Crim.P. 20 (Transfer from the County for  
213 Plea and Sentence); N.D.C.C. § 12.1-32-15.

RULE 4. INTERESTED PERSONS

1 Persons who may participate in a juvenile matter include:

2 (1) the parties as defined in Rule 3(b);

3 (2) the child's guardian ad litem;

4 (3) the victim to the extent required by N.D. Const. Art. I, § 25 in a  
5 delinquency case, if requested by the victim;

6 ~~(3)~~ (4) in the case of an Indian child, the child's Indian custodian and Indian  
7 tribe through the tribal representative;

8 ~~(4)~~ (5) in the case of a foster child, the child's foster parents, pre-adoptive  
9 parents and relatives providing care for the child;

10 ~~(5)~~ (6) any other person who is named by the court to be important to a  
11 resolution that is in the best interests of the child.

12 EXPLANATORY NOTE

13 Rule 4 was adopted effective March 1, 2010. In these rules, the term  
14 "guardian ad litem" includes lay and attorney guardians ad litem. Amended  
15 effective May 1, 2017.

16 Paragraph (3) was added, effective May 1, 2017, to allow a victim,  
17 on request, to take part in a delinquency case. "Victim" is defined in N.D. Const.  
18 Art. I, § 25(4).

19 SOURCES: Juvenile Policy Board Minutes of February 20, 2009;  
20 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September

21 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of  
22 January 26-27, 2017, pages 14-15; May 21-22, 2009.

23 STATUTES AFFECTED:

24 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 12.1-35.

25 CROSS REFERENCE: N.D.R.Juv.P. 3 (Contents of Petition); ~~N.D.C.C. ch.~~  
26 ~~12.1-35 (Child Victim and Witness Fair Treatment Standards).~~

RULE 12.1 DEPOSITIONS

1           (a) Agreement of Parties. Upon agreement of the parties, a deposition may  
2 be taken on oral examination.

3           (b) Order of Court. Following the initial appearance, any party may move  
4 the court to order the testimony of any other person or party be taken by deposition  
5 on oral examination, if:

6           (1) there is a reasonable probability that the witness will be unable to be  
7 present or to testify at the hearing because of the witness' existing physical or  
8 mental illness, infirmity, or death;

9           (2) the party taking the deposition cannot procure the attendance of the  
10 witness at a hearing by a subpoena, order of the court, or other reasonable means;  
11 or

12           (3) on a showing that the information sought cannot be obtained by other  
13 means.

14           (c) Subpoena. Attendance of witnesses at oral deposition may be compelled  
15 by subpoena as provided by Rule 13. Attendance of parties at oral deposition must  
16 be ordered by the court when the court grants a motion under subdivision (b) and  
17 must be procured through service of the order and a notice of the time and place of  
18 the taking of the deposition on the party.

19           (d) Notice, Oath and Record.

20           (1) Notice. A party taking a deposition must give reasonable notice in

21 writing to each party to the action. The notice must state the time and place for  
22 taking the deposition and the name and address of each person to be examined, if  
23 known, and, if the name is not known, a general description sufficient to identify  
24 the person or the particular class or group to which the person belongs.

25 (2) Oath and Record. The officer before whom the deposition is to be taken  
26 must put the witness on oath and personally, or by someone acting under the  
27 officer's direction and in the officer's presence, must record the testimony of the  
28 witness. The testimony must be taken stenographically or recorded by audio-visual  
29 means or any other means ordered. If requested by one of the parties, the testimony  
30 must be transcribed. The court may order the cost of transcription paid by one or  
31 some of, or apportioned among, the parties.

32 (e) Scope and Manner of Examination; Objections; Motion to Terminate or  
33 Limit.

34 (1) ~~Consent Required~~ Participation.

35 (A) In no event shall the deposition of a child who is charged with an  
36 offense be taken without the child's consent.

37 (B) A victim may refuse to participate in a deposition requested by a  
38 respondent or a respondent's attorney.

39 (2) Scope and Manner of Taking. The scope and manner of examination  
40 and cross examination in the taking of a deposition to be used at the hearing must  
41 be the same as that allowed at the hearing.

42 (3) Objections. All objections made at the time of the examination to the

43 qualifications of the person taking the deposition, or to the manner of taking it, or  
44 to the evidence presented or to the conduct of any person present at the depositions  
45 and any other objection to the proceedings must be recorded by the officer before  
46 whom the deposition is taken. Evidence objected to must be taken subject to the  
47 objections unless the objection is based on the witness's use of the Fifth  
48 Amendment.

49 (4) Motion to Terminate or Limit Examination. At any time during the  
50 taking of the deposition, on motion of a party or of the deponent and upon a  
51 showing that the examination is being conducted in bad faith or in such manner as  
52 unreasonably to annoy, embarrass, or oppress the deponent or party, the court in  
53 which the action is pending or the court in the district where the deposition is  
54 being taken may order the officer conducting the examination to cease from taking  
55 the deposition, or may limit the scope and manner of the taking of the deposition  
56 by ordering as follows:

57 (A) that certain matters not be inquired into or that the scope of examination  
58 be limited to certain matters, or

59 (B) that the examination be conducted with no one present except persons  
60 designated by the court.

61 (f) Transcription, Certification and Filing. When the testimony is fully  
62 transcribed, the officer must certify on the deposition the witness was duly sworn  
63 and the deposition is a true record of the testimony given by the witness. Unless  
64 otherwise ordered by the court, the officer must securely seal the deposition in an

65 envelope endorsed with the title of the case and marked "Deposition of (here insert  
66 name of witness)" and must promptly deliver or send the transcript by registered or  
67 certified mail or a traceable third-party commercial delivery service to the party  
68 noticing the deposition, who must be identified on the record. Upon the request of  
69 a party, documents and other things produced during the examination of a witness,  
70 or copies thereof, must be marked for identification and annexed as exhibits to the  
71 deposition, and may be inspected and copied by any party. The exhibits may then  
72 be used in the same manner as if annexed to the deposition.

73 (g) Failure to Appear. If a party giving notice of the taking of a deposition  
74 fails to attend and proceed therewith and another party attends in person or by  
75 attorney pursuant to the notice, the court may order the party giving the notice to  
76 pay to the other party the reasonable expenses incurred by that party and that  
77 party's attorney in attending, including reasonable attorney's fees.

78 EXPLANATORY NOTE

79 Rule 12.1 was adopted effective March 1, 2010. Amended  
80 effective May 1, 2017.

81 Paragraph (e)(1) was amended, effective May 1, 2017, to provide  
82 that a victim may refuse to participate in a deposition requested by a respondent or  
83 a respondent's attorney. This right is granted by N.D. Const. Art. I, § 25(1)(f).  
84 "Victim" is defined in N.D. Const. Art. I, § 25(4).

85 SOURCES: Joint Procedure Committee Minutes of January 26-27, 2017,  
86 pages 15-16; Minn. R. Juv. Prot. P. 17.04(b), Minn. R. Juv. Del. P. 10.07,

87 N.D.R.Civ.P. 30.

88 STATUTES AFFECTED:

89 CONSIDERED: N.D. Const. Art. I, § 25.



RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

1 (a) Redacted Filings.

2 (1) In General. Unless the court orders otherwise, in an electronic or paper  
3 filing with the court that contains an individual's social-security number,  
4 taxpayer-identification number, or birth date, the name of an individual known to  
5 be a minor, a financial-account number, a party or nonparty making the filing must  
6 include only:

7 ~~(1)~~ (A) the last four digits of the social-security number and  
8 taxpayer-identification number;

9 ~~(2)~~ (B) the year of the individual's birth;

10 ~~(3)~~ (C) the minor's initials; and

11 ~~(4)~~ (D) the last four digits of the financial-account number.

12 (2) Victim Information. If a victim requests, all victim contact information  
13 must be redacted from documents to be filed with the court in a criminal or  
14 delinquency case.

15 (b) Responsibility of Party or Nonparty to Redact. A party or nonparty  
16 making a filing with the court is solely responsible for ensuring that protected  
17 information does not appear on the filing.

18 (c) Exemptions from the Redaction Requirement.

19 The redaction requirement does not apply to the following:

20 (1) a financial-account number or real property address that identifies the

21 property allegedly subject to forfeiture in a forfeiture proceeding;

22 (2) the record of an administrative or agency proceeding;

23 (3) the record of a court or tribunal, if that record was not subject to the  
24 redaction requirement when originally filed;

25 (4) a filing covered by Rule 3.4 (d);

26 (5) a court filing that is related to a criminal matter and that is prepared  
27 before the filing of a criminal charge or is not filed as part of any docketed  
28 criminal case;

29 (6) an arrest or search warrant;

30 (7) a charging document and an affidavit filed in support of a charging  
31 document;

32 (8) the name of an individual known to be a minor when the minor is a  
33 party, and there is no statute, regulation or rule mandating nondisclosure; and

34 (9) a defendant's date of birth in a court filing that is related to criminal  
35 matters, non-criminal motor vehicle and game and fish matters, and infractions.

36 (d) Filings Made Under Seal. The court may order that a filing be made  
37 under seal without redaction. The court may later unseal the filing or order the  
38 person who made the filing to file a redacted version for the public record.

39 (e) Protective Orders. For good cause, the court may by order in a case:

40 (1) require redaction of additional information; or

41 (2) limit or prohibit a nonparty's remote electronic access to a document  
42 filed with the court.

43 (f) Filing a Confidential Information Form.

44 (1) In General. A filing that contains redacted information must be filed  
45 together with a confidential information form (shown in Appendix H) that  
46 identifies each item of redacted information and specifies an appropriate identifier  
47 that uniquely corresponds to each item listed. The form will be confidential except  
48 as to the parties or as the court may direct. Any reference in the case to a listed  
49 identifier will be construed to refer to the corresponding item of information.

50 (2) Defendant Information. In a criminal case, the prosecutor must file a  
51 confidential information form that includes, when known, the defendant's social  
52 security number.

53 (g) Non-conforming Documents.

54 (1) Waiver. A person waives the protection of Rule 3.4 (a) as to the person's  
55 own information by filing it without redaction and not under seal.

56 (2) Sanctions. If a party fails to comply with this rule, the court on motion  
57 of another party or its own motion, may order the pleading or other document to be  
58 returned to the party for reformation prior to filing, with an extension of any  
59 deadline to complete the filing. If the document has been filed, and an order to  
60 reform is not obeyed, the court may order the document stricken.

61 EXPLANATORY NOTE

62 Rule 3.4 was adopted effective March 1, 2009. Rule 3.4 was amended,  
63 effective March 15, 2009; March 1, 2010; May 1, 2017.

64 Parties should limit the amount of protected information they include in

65 court filings. This rule requires parties to redact protected information when its  
66 inclusion in a filing cannot be avoided.

67 This rule's redaction requirements are intended to exclude protected  
68 information from public disclosure. Unless a document is also placed in a  
69 non-restricted file, redaction of documents filed in cases that are confidential by  
70 law or rule is not required.

71 The term "financial-account number" includes any credit, debit or electronic  
72 fund transfer card numbers, and any other financial account number.

73 Documents containing redacted protected information must be filed  
74 together with a confidential information form under subdivision (f) when a party is  
75 required by statute, policy or rule to include the protected information in the  
76 document. For example, N.D.C.C. § 14-05-02.1 requires a divorce decree to  
77 contain the social security numbers of the parties to the divorce. Under subdivision  
78 (f), a party to a divorce case may comply with this statute and the redaction  
79 requirements of this rule by filing a confidential information form and a redacted  
80 version of the decree in the public part of the file.

81 Subdivision (a) was amended, effective March 1, 2010, to eliminate the  
82 requirement to redact addresses in criminal matters.

83 Subdivision (a) was amended, effective May 1, 2017, to require, upon  
84 request of the victim, the redaction of all victim contact information from  
85 documents before they may be filed with the court in a criminal or delinquency  
86 case. This right is granted by N.D. Const. Art. I, § 25(1)(e). "Victim" is defined in

87 N.D. Const. Art. I, § 25(4).

88 Subdivision (b) was adopted, effective March 1, 2010, to indicate it is the  
89 responsibility of a party or nonparty making a court filing to refrain from including  
90 protected information in the filing.

91 The clerk of court is not required to review a document filed with the court  
92 for compliance with this rule.

93 Subdivision (c), formerly subdivision (b), was amended, effective March 1,  
94 2010, to add a redaction exemption for the name of a minor when the minor is a  
95 party and there is no statute, regulation or rule mandating nondisclosure of the  
96 minor's name.

97 Subdivision (c), formerly subdivision (b), was amended, effective March 1,  
98 2010, to add a redaction exemption for a defendant's date of birth in a court filing  
99 that is related to criminal matters, non-criminal motor vehicle and game and fish  
100 matters, and infractions.

101 Subdivision (f) was amended, effective March 1, 2010, to require that  
102 state's attorneys file confidential information forms containing certain defendant  
103 information when known.

104 Subdivision (g) was amended, effective March 1, 2010, to allow courts to  
105 order reformation of documents not in conformity with this rule prior to filing.

106 Sources: Joint Procedure Committee Minutes of January 26-27, 2017,  
107 page 22; September 24-25, 2009, pages 3-7; May 21-22, 2009, pages 28-44;  
108 January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27,

109 2007, page 31.

110 Statutes Affected:

111 Considered: N.D. Const. Art. I, § 25; N.D.C.C. § 14-05-02.1

112 Cross Reference: N.D.R.Ct. 3.1 (Pleadings); N.D.Sup.Ct.Admin.R. 41

113 (Access to Judicial Records).

RULE 41. ACCESS TO COURT RECORDS

1 Section 1. Purpose.

2 The purpose of this rule is to provide a comprehensive framework for  
3 public access to court records. Every member of the public will have access to  
4 court records as provided in this rule.

5 Section 2. Definitions.

6 (a) "Court record," regardless of the form, includes:

7 (1) any document, information, or other thing that is collected, received, or  
8 maintained by court personnel in connection with a judicial proceeding;

9 (2) any index, calendar, docket, register of actions, official record of the  
10 proceedings, order, decree, judgment, minute, and any information in a case  
11 management system created by or prepared by court personnel that is related to a  
12 judicial proceeding; and

13 (3) information maintained by court personnel pertaining to the  
14 administration of the court or clerk of court office and not associated with any  
15 particular case.

16 (b) "Court record" does not include:

17 (1) other records maintained by the public official who also serves as clerk  
18 of court;

19 (2) information gathered, maintained or stored by a governmental agency or  
20 other entity to which the court has access but which is not part of the court record

21 as defined in this rule; and

22 (3) a record that has been disposed of under court records management  
23 rules.

24 (c) "Public access" means that the public may inspect and obtain a copy of  
25 the information in a court record.

26 (d) "Remote access" means the ability to electronically search, inspect, or  
27 copy information in a court record without the need to physically visit the court  
28 facility where the court record is maintained.

29 (e) "Bulk distribution" means the distribution of all, or a significant subset,  
30 of the information in court records, as is and without modification or compilation.

31 (f) "Compiled information" means information that is derived from the  
32 selection, aggregation or reformulation by the court of some of the information  
33 from more than one individual court record.

34 (g) "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  
37 other 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  
40 electronic file from which a transcript of an event can be prepared.

41 Section 3. General Access Rule.

42 (a) Public Access to Court Records.



43 (1) Court records are accessible to the public except as prohibited by this  
44 rule.

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

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

51 (b) When Court Records May Be Accessed.

52 (1) Court records in a court facility must be available for public access  
53 during normal business hours. Court records in electronic form to which the court  
54 allows remote access will be available for access subject to technical systems  
55 availability.

56 (2) Upon receiving a request for access to a court record, the clerk of court  
57 must respond as promptly as practical. If a request cannot be granted promptly, or  
58 at all, an explanation must be given to the requestor as soon as possible. The  
59 requestor has a right to at least the following information: the nature of any  
60 problem preventing access and the specific statute, federal law, or court or  
61 administrative rule that is the basis of the denial. The explanation must be in  
62 writing if desired by the requestor.

63 (3) The clerk of court is not required to search within a court record for  
64 specific information that may be sought by a requestor.

65 (c) Access to Court Records Filed Before March 1, 2009. Court records  
66 filed before the adoption of N.D.R.Ct. 3.4 may contain protected information listed  
67 under N.D.R.Ct. 3.4(a). This rule does not require the review and redaction of  
68 protected information from a court record that was filed before the adoption of  
69 N.D.R.Ct. 3.4 on March 1, 2009.

70 (d) Fees for Access. The court may charge a fee for access to court records  
71 in electronic form, for remote access, for bulk distribution or for compiled  
72 information. To the extent that public access to information is provided exclusively  
73 through a vendor, the court will ensure that any fee imposed by the vendor for the  
74 cost of providing access is reasonable.

75 Section 4. Methods of Access to Court Records.

76 (a) Access to Court Records at Court Facility.

77 (1) Request for Access. Any person desiring to inspect, examine, or copy a  
78 court record must make an oral or written request to the clerk of court. If the  
79 request is oral, the clerk may require a written request if the clerk determines that  
80 the disclosure of the record is questionable or the request is so involved or lengthy  
81 as to need further definition. The request must clearly identify the record requested  
82 so that the clerk can locate the record without doing extensive research.

83 Continuing requests for a document not yet in existence may not be considered.

84 (2) Response to Request. The clerk of court is not required to allow access  
85 to more than ten files per day per requestor but may do so in the exercise of the  
86 clerk's discretion if the access will not disrupt the clerk's primary function. If the

87 request for access and inspection is granted, the clerk may set reasonable time and  
88 manner of inspection requirements that ensure timely access while protecting the  
89 integrity of the records and preserving the affected office from undue disruption.  
90 The inspection area must be within full view of court personnel whenever possible.  
91 The person inspecting the records may not leave the court facility until the records  
92 are returned and examined for completeness.

93 (3) Response by Court. If a clerk of court determines there is a question  
94 about whether a record may be disclosed, or if a written request is made under  
95 Section 6(b) for a ruling by the court after the clerk denies or grants an access  
96 request, the clerk must refer the request to the court for determination. The court  
97 must use the standards listed in Section 6 to determine whether to grant or deny the  
98 access request.

99 (b) Remote Access to Court Records.

100 (1) In General. The following information in court records must be made  
101 remotely accessible to the public if it exists in electronic form, unless public access  
102 is restricted under this rule:

103 (A) litigant/party indexes to cases filed with the court;

104 (B) listings of new case filings, including the names of the parties;

105 (C) register of actions showing what documents have been filed in a case;

106 (D) calendars or dockets of court proceedings, including the case number  
107 and caption, date and time of hearing, and location of hearing; and

108 (E) reports specifically developed for electronic transfer approved by the

109 state court administrator and reports generated in the normal course of business, if  
110 the report does not contain information that is excluded from public access under  
111 Section 5 or 6.

112 (2) Access Regulation.

113 (A) The Supreme Court may adopt and implement policies to regulate  
114 remote access to court records. These policies must be posted publicly on the  
115 Court's website.

116 (B) Attorneys licensed in North Dakota may remotely access court records  
117 through the secure public access system.

118 (C) A record of a closed criminal case for which there is no conviction may  
119 not be remotely accessed through a name search except through the secure public  
120 access system.

121 (c) Requests for Bulk Distribution of Court Records.

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

124 (2) A request for bulk distribution of information not publicly accessible  
125 can be made to the court for scholarly, journalistic, political, governmental,  
126 research, evaluation or statistical purposes when the identification of specific  
127 individuals is ancillary to the purpose of the inquiry. Prior to the release of  
128 information under this subsection the requestor must comply with the provisions of  
129 Section 6.

130 (3) A court may allow a party to a bulk distribution agreement access to

131 birth date, street address, and social security number information if the party  
132 certifies that it will use the data for legitimate purposes as permitted by law.

133 (d) Access to Compiled Information From Court Records.

134 (1) Any member of the public may request compiled information that  
135 consists solely of information that is publicly accessible and that is not already in  
136 an existing report. The court may compile and provide the information if it  
137 determines, in its discretion, that providing the information meets criteria  
138 established by the court, that the resources are available to compile the information  
139 and that it is an appropriate use of public resources. The court may delegate to its  
140 staff or the clerk of court the authority to make the initial determination to provide  
141 compiled information.

142 (2) Requesting compiled restricted information.

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

147 (B) The request must:

- 148 (i) identify what information is sought,  
149 (ii) describe the purpose for requesting the information and explain how the  
150 information will benefit the public interest or public education, and  
151 (iii) explain provisions for the secure protection of any information  
152 requested to which public access is restricted or prohibited.

153 (C) The court may grant the request and compile the information if it  
154 determines that doing so meets criteria established by the court and is consistent  
155 with the purposes of this rule, the resources are available to compile the  
156 information, and that it is an appropriate use of public resources.

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

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

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

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

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

168 Section 5. Court Records Excluded From Public Access.

169 The following information in a court record is not accessible to the public:

170 (a) information that is not accessible to the public under federal law;

171 (b) information that is not accessible to the public under state law, court  
172 rule, case law or court order, including:

173 (1) affidavits or sworn testimony and records of proceedings in support of  
174 the issuance of a search or arrest warrant pending the return of the warrant;

175 (2) information in a complaint and associated arrest or search warrant to the  
176 extent confidentiality is ordered by the court under N.D.C.C. §§ 29-05-32 or  
177 29-29-22;

178 (3) documents filed with the court for in-camera examination pending  
179 disclosure;

180 (4) case information and documents in Child Relinquishment to Identified  
181 Adoptive Parent cases brought under N.D.C.C. ch. 14-15.1;

182 (5) domestic violence protection order files and disorderly conduct  
183 restraining order files when the restraining order is sought due to domestic  
184 violence, except for orders of the court;

185 (6) documents in domestic violence protection order and disorderly conduct  
186 restraining order cases in which the initial petition was dismissed summarily by the  
187 court without a contested hearing;

188 (7) names of qualified or summoned jurors and contents of jury  
189 qualification forms if disclosure is prohibited or restricted by order of the court;

190 (8) records of voir dire of jurors, unless disclosure is permitted by court  
191 order or rule;

192 (9) records of deferred impositions of sentences resulting in dismissal;

193 (10) records of a case in which the magistrate finds no probable cause for  
194 the issuance of a complaint;

195 (11) unless exempted from redaction by N.D.R.Ct. 3.4(c), protected  
196 information:

197 (A) except for the last four digits, social security numbers, taxpayer  
198 identification numbers, and financial account numbers,

199 (B) except for the year, birth dates, and

200 (C) except for the initials, the name of an individual known to be a minor,  
201 unless the minor is a party, and there is no statute, regulation, or rule mandating  
202 nondisclosure;

203 (12) judge and court personnel work material, including personal calendars,  
204 communications from law clerks, bench memoranda, notes, work in progress, draft  
205 documents and non-finalized documents;

206 (13) party, witness and crime victim contact information gathered and  
207 recorded by the court for administrative purposes, including telephone numbers  
208 and e-mail, street and postal addresses;

209 (14) the name of a patron of the North Dakota Legal Self Help Center or  
210 information sufficient to identify a patron or the subject about which a patron  
211 requested information.

212 (c) This rule does not preclude access to court records by the following  
213 persons in the following situations:

214 (1) federal, state, and local officials, or their agents, examining a court  
215 record in the exercise of their official duties and powers;

216 (2) parties to an action and their attorneys examining the court file of the  
217 action, unless restricted by order of the court, but parties and attorneys may not  
218 access judge and court personnel work material in the court file.



219 (d) A member of the public may request the court to allow access to  
220 information excluded under Section 5 as provided in Section 6.

221 Section 6. Requests to Prohibit Public Access to Information in Court  
222 Records or to Obtain Access to Restricted Information.

223 (a) Request to Prohibit Access.

224 (1) A request to the court to prohibit public access to information in a court  
225 record may be made by any party to a case, by the individual about whom  
226 information is present in the court record, or on the court's own motion on notice  
227 as provided in Section 6(c).

228 (2) The court must decide whether there are sufficient grounds to overcome  
229 the presumption of openness of court records and prohibit access according to  
230 applicable constitutional, statutory and case law.

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

235 (4) The closure of the records must be no broader than necessary to protect  
236 the articulated interest. The court must consider reasonable alternatives to closure,  
237 such as redaction or partial closure, and the court must make findings adequate to  
238 support the closure. The court may not deny access only on the ground that the  
239 record contains confidential or closed information.

240 (5) In restricting access the court must use the least restrictive means that

241 will achieve the purposes of this rule and the needs of the requestor.

242 (6) If a victim requests, all victim contact information in a criminal court  
243 record must be redacted;

244 ~~(6)~~ (7) If the court concludes, after conducting the balancing analysis and  
245 making findings as required by paragraphs (1) through (5), that the interest of  
246 justice will be served, it may prohibit public Internet access to an individual  
247 defendant's electronic court record in a criminal case:

248 (A) if the charges against the defendant are dismissed; or

249 (B) if the defendant is acquitted.

250 If the court grants a request to prohibit public Internet access to an  
251 electronic court record in a criminal case, the search result for the record must  
252 display the words "Internet Access Prohibited under N.D.Sup.Ct. Admin.R 41."

253 (b) Request to Obtain Access.

254 (1) A request to obtain access to information in a court record to which  
255 access is prohibited under Section 4(a), 5 or 6(a) may be made to the court by any  
256 member of the public or on the court's own motion on notice as provided in  
257 Section 6(c).

258 (2) In deciding whether to allow access, the court must consider whether  
259 there are sufficient grounds to overcome the presumption of openness of court  
260 records and continue to prohibit access under applicable constitutional, statutory  
261 and case law. In deciding this the court must consider the standards outlined in  
262 Section 6(a).

263 (c) Form of Request.

264 (1) The request must be made by a written motion to the court.

265 (2) The requestor must give notice to all parties in the case.

266 (3) The court may require notice to be given by the requestor or another

267 party to any individuals or entities identified in the information that is the subject

268 of the request. When the request is for access to information to which access was

269 previously prohibited under Section 6(a), the court must provide notice to the

270 individual or entity that requested that access be prohibited.

271 Section 7. Obligations Of Vendors Providing Information Technology

272 Support To A Court To Maintain Court Records.

273 (a) If the court contracts with a vendor to provide information technology

274 support to gather, store, or make accessible court records, the contract will require

275 the vendor to comply with the intent and provisions of this rule. For purposes of

276 this section, "vendor" includes a state, county or local governmental agency that

277 provides information technology services to a court.

278 (b) By contract the vendor will be required to notify the court of any

279 requests for compiled information or bulk distribution of information, including

280 the vendor's requests for such information for its own use.

281 EXPLANATORY NOTE

282 Adopted on an emergency basis effective October 1, 1996; Amended and

283 adopted effective November 12, 1997; March 1, 2001; July 1, 2006; March 1,

284 2009; March 15, 2009; March 1, 2010; March 1, 2012; March 1, 2015; March 1,

285 2016; March 1, 2017; May 1, 2017. Appendix amended effective August 1,  
286 2001, to reflect the name change of State Bar Board to State Board of Law  
287 Examiners.

288 Section 3(b)(3) was added, effective March 1, 2016, to clarify that the clerk  
289 of court is not required to search within a court record for specific information that  
290 may be sought by a requestor.

291 Section 3(c) was adopted, effective March 1, 2010, to state that protected  
292 information may be contained in court records filed before the adoption of  
293 N.D.R.Ct. 3.4.

294 Section 4(b) was amended, effective March 1, 2017, to allow the Supreme  
295 Court to enact and implement policies to regulate remote access to court records,  
296 to allow attorneys to remotely access court records through the secure public  
297 access system, and to limit remote access by name search to pre-conviction records  
298 in criminal cases.

299 Section 4(c) was amended, effective March 15, 2009, to allow parties who  
300 enter into bulk distribution agreements with the courts to have access to birth date,  
301 street address, and social security number information upon certifying compliance  
302 with laws governing the security of protected information. Such laws include the  
303 Federal Fair Credit Reporting Act, the Gramm Leach Bliley Act, the USA Patriot  
304 Act and the Driver's Privacy Protection Act.

305 Section 5(b)(6) was amended, effective March 1, 2015, to clarify that the  
306 restriction on public access to documents in domestic violence protection order

307 and disorderly conduct restraining order cases under this paragraph is limited to  
308 cases that were dismissed summarily.

309 Section 5(b)(8) was amended, effective March 15, 2009, to list types of  
310 protected information open to the public. The term "financial-account number" in  
311 Section 5(b)(8) includes any credit, debit or electronic fund transfer card number,  
312 and any other financial account number.

313 Section 5(b)(8) was amended, effective March 1, 2010, to incorporate the  
314 exemptions from redaction contained in N.D.R.Ct. 3.4(b). A document containing  
315 protected information that is exempt from redaction under N.D.R.Ct. 3.4(b) is  
316 accessible to the public.

317 Section 5(b)(10) was added, effective March 1, 2017, to exclude cases in  
318 which a magistrate finds no probable cause for the issuance of a complaint from  
319 public access.

320 Section 5(b)(12) was added, effective March 1, 2016, to exclude party,  
321 witness and crime victim contact information gathered and recorded by the court  
322 for administrative purposes from public access.

323 Section 5(b)(13) was added, effective March 1, 2017, to exclude  
324 information about patrons of the North Dakota Legal Self Help Center from public  
325 access.

326 Section 6(a)(6) was added, effective May 1, 2017, to require, upon  
327 request of the victim, redaction of all victim contact information in a criminal court  
328 record. This right is granted by N.D. Const. Art. I, § 25(1)(e). "Victim" is defined

329 in N.D. Const. Art. I, § 25(4).

330 Section 6(a)(~~6~~) (7) was added, effective March 1, 2012, to provide a method  
331 for the court to prohibit public Internet access to an electronic case record when  
332 charges against a defendant are dismissed or the defendant is acquitted. A request  
333 under Section 6(a)(1) is required before the court can act to prohibit access under  
334 Section 6(a)(6).

335 Nothing in this rule or N.D.R.Ct. 3.4 precludes a clerk of court or the  
336 electronic case management system from identifying non-confidential records that  
337 match a name and date of birth or a name and social security number.

338 Joint Procedure Committee Minutes of January 26-27, 2017, pages 17-22;  
339 September 29-30, 2016, pages 6-9, 28-29; May 12-13, 2016, pages 22-25; January  
340 28-29, 2016, pages 2-7; September 24-25, 2015, pages 15-16, 20-21; April 23-24,  
341 2015, pages 8-10; April 24-25, 2014, page 27; April 28-29, 2011, pages 9-12;  
342 September 23-24, 2010, pages 16-20; September 24-25, 2009, pages 8-9; May  
343 21-22, 2009, pages 28-44; January 29-20, 2009, pages 3-4; September 25, 2008,  
344 pages 2-6; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April  
345 26-27, 2007, page 31; September 22-23, 2005, pages 6-16; April 28-29, 2005,  
346 pages 22-25; April 29-30, 2004, pages 6-13, January 29-30, 2004, pages 3-8;  
347 September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-12. Court  
348 Technology Committee Minutes of June 18, 2004; March 19, 2004; September 12,  
349 2003; Conference of Chief Justices/Conference of State Court Administrators:  
350 Guidelines for Public Access to Court Records.

351 Statutes Affected:

352 Considered: N.D. Const. Art. I, § 25.

353 Cross Reference: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made With  
354 the Court).