

ACCESS TO JUDICIAL RECORDS**Administrative
Rule 41****Section 1. Policy.**

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

Section 2. Definitions.

In this Rule:

- (1) "Custodian" means the clerk of the district court.
- (2) "Custodial judge" means, for any record of a judicial proceeding in a case file in the district court, the judge presiding in that case or the judge designated in writing by the presiding judge of the judicial district; and, for any record not in a case file in the district court, the presiding judge of the judicial district or the judge designated in writing by the presiding judge.
- (3) "Personal information" means a person's social security number, any credit, debit, or electronic fund transfer card numbers, and any other financial account numbers.
- (4) "Personnel" means clerks, judges, and staff of a district court.
- (5) "Records" means all documents and things filed or docketed in the office of clerk of district court and does not include administrative records.

Section 3. Records Subject to Examination, Inspection, and Copying.

Except as provided in Sections 4, 5, 8, and 9, all records are subject to examination, inspection, and copying.

Section 4. Records Exempt from Disclosure.

The following records are confidential and exempt from disclosure:

- (1) Documents and records to the extent access is otherwise restricted by state or federal law or court rule or policy. A partial list is contained in the Appendix to this rule.
- (2) Affidavits or sworn testimony and records of proceedings in support of the issuance of

a search or arrest warrant pending the return of the warrant.

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

(4) Documents filed with the court for in-camera examination pending disclosure.

(5) Except for orders of the court, domestic violence protection order files and disorderly conduct restraining order files when the restraining order is sought due to domestic violence.

(6) Names of qualified jurors and contents of jury qualification forms if disclosure is prohibited or restricted by order of the court.

(7) Any personal information contained in any documents or records filed or docketed with the court, except that all documents or records filed in a matter must be made available in their entirety to parties to the matter.

Section 5. Other Prohibitions or Limitations on Disclosure.

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

Section 6. Request for Records.

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

Section 7. Response to Request.

The custodian shall respond to the request as promptly as practical. If the request for access and inspection is granted, the custodian may set reasonable time and manner of inspection requirements that ensure timely access while protecting the integrity of the records and preserving the affected office from undue disruption. The inspection area must be within full view of court personnel whenever possible. The person inspecting the records may not leave the court facility until the records are returned and examined for completeness. If a request cannot be granted promptly, or

at all, an explanation must be given to the requestor as soon as possible. The requesting person has a right to at least the following information: the nature of any problem preventing access and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation must be in writing if desired by the requestor.

Section 8. Response by Custodial Judge.

If a custodian determines there is a question as to whether a record should be disclosed, or if a written request is made for a ruling by a judge after the custodian denies or grants the request, the custodian shall refer the request to the custodial judge for determination. The custodial judge shall make a written determination as promptly as possible as to whether the record should be disclosed. In the sole discretion of the custodial judge, an informal hearing may be held by the judge on the question of whether the record should be disclosed. The custodial judge shall determine the time and place of the hearing and the notice to be given by the custodian to the requestor. If a hearing is held under this rule, the response to the requestor may be delayed a reasonable time after the conclusion of the hearing.

Section 9. Motion Regarding Sealing of Records.

Any person, or the court on its own motion, may move, in the judicial proceeding in which records are filed, to seal or unseal a part or all of the records in the proceeding. The custodial judge shall hear the motion after the moving party gives notice of the hearing to all parties to the proceeding and any other person designated by the judge. The custodial judge shall issue a written decision on the motion to seal or unseal records, which the court may reconsider, alter, or amend at any time. A record that is the subject of a motion to seal is confidential until a written decision on the motion is issued.

Section 10. Review of Decision on Access, Sealing, or Unsealing.

If a custodian denies or grants a request for the examination or copying of a record under Section 7, the requestor may file a request for a ruling by the custodial judge. If the custodial judge denies or grants a request for the examination or copying of a record under Section 8, the sole remedy of the requestor is to institute a proceeding in district court.

Section 11. Status of Records on Appeal.

The status of a record transmitted to the Supreme Court on appeal continues unless the Supreme Court orders otherwise.

Section 12. Cost of Copying Records.

The custodian or custodial judge shall determine the cost to be charged to a person requesting a copy of a record.

Section 13. Application.

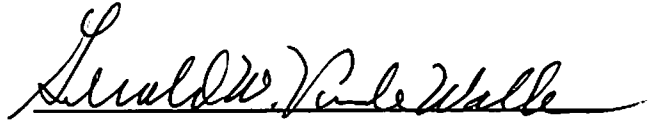
This rule applies to all judicial records existing on or after the date of adoption of this rule. This rule does not preclude access to records by the following persons in the following situations:

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

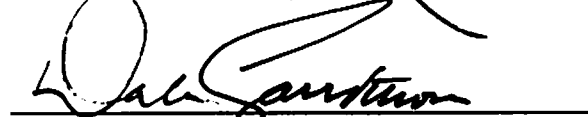
(2) Parties to an action and their attorneys examining the court file of the action, unless restricted by order of the court.

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

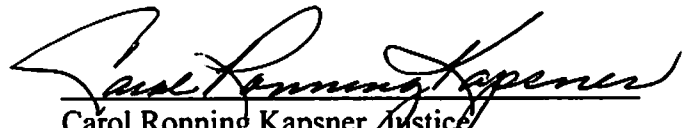
Dated at Bismarck, North Dakota, November 17, 2004.


Gerald W. VandeWalle, Chief Justice

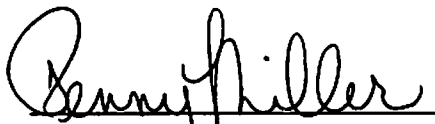

William A. Neumann, Justice


Dale V. Sandstrom, Justice


Mary Muehlen Maring, Justice


Carol Ronning Kapsner, Justice

ATTEST:


Penny Miller, Clerk

Adopted on an emergency basis effective October 1, 1996; Amended and adopted effective November 12, 1997; March 1, 2001; March 1, 2005. Appendix amended effective August 1, 2001, to reflect the name change of State Bar Board to State Board of Law Examiners.

APPENDIX

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

ND Century Code

12.1-32-07.2(2)	Records and papers concerning deferred imposition of sentence when guilty plea is withdrawn or guilty verdict set aside
12.1-32-09(3)	Notice specifying defendant as a dangerous special offender for sentencing purposes
12.1-35-03	Information identifying a child victim of a crime
14-02.1-03.1(3), (4), (11)	Records involving judicial authorization for abortion for unmarried minor
14-09.1-06	Mediation proceedings concerning contested child support, custody, or visitation
14-15-16(4)	Adoption proceedings
14-17-19	Paternity proceedings
23-07.6-11	Confinement proceedings for those with communicable diseases
23-02.1-27	Certain information in birth and death certificates
25-03.1-43	Mental health commitments
25-03.3-03	Commitment proceedings for sexually dangerous individuals
27-20-51	Juvenile court records
27-09.1-12(4)	Jury selection records
29-10.1-30, -31	Grand jury proceedings
30.1-11-01	Wills deposited for safekeeping
37-01-34	Recorded military discharge papers
50-06-05.1(15)	Social-psychological evaluations and predisposition reports provided by department of human services

Court Rules and Policies

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

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

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

Administrative Rule 40 Audiotapes of closed or confidential proceedings

Administrative Policy 215 Access to computer-based data

Administrative Policy 402 Access to Juvenile Court Records

Federal Regulations

22 C.F.R. Section 51.33 Passport records

Boards and commissions governed by rules adopted by the Supreme Court include: Commission for Continuing Legal Education; Disciplinary Board; Judicial Conduct Commission, State Board of Law Examiners.