

From: [Hoffer, Susan](#)
To: [Miller, Penny](#)
Subject: Comments N. D. Sup. Ct. Admin Rule 19 and 41
Date: Thursday, May 31, 2018 4:40:32 PM

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 31, 2018
STATE OF NORTH DAKOTA

Dear Ms. Miller,

As a member of the court services committee, I would like to commend the members for the time, thought and effort put into current drafts of N. D. Sup. Ct Administrative Rule 19 and Administrative Rule 41.

It seems each time, I use Admin Rule 41 in reviewing court files for retention there is always another revision that would make the review more timely and easier to audit.

I would like to submit the following amendment to the current version of:

Misdemeanor - Protection Order Violation - 500450 - This series contains pleadings charging a misdemeanor violation of a domestic violence protection order. Retain for 100 years from date of final disposition or date a financial obligation is satisfied or determined uncollectible, whichever is later. Offer to the State Archives if appealed. Include medical or drug treatment documents. All other files may be disposed by landfill. Dispose of PSI evaluations by shredding.

Felonies - Protection Order Violation - 500449 - This series contains pleadings charging a felony violation of a domestic violence protection order. Retain for 100 years from the date of final disposition or date a financial obligation is satisfied or determined uncollectible, whichever is later. Offer to State Archives if case appealed. Include medical or drug treatment documents. Dispose of PSI evaluations by shredding. All other files may be disposed by landfill.

Request: The statute that applies to these retention files be added to the language within the retention schedule: **N.D. C. C. 14-07.1-02**

A recent audit lead me to inquire of Ms. Nieuwsma regarding cases filed under NDCC 12.1-10-05. She clarified that only cases filed with NDCC 14-07.1-02 would apply to the 100 year retention period. I believe the addition of the statute would assist Clerks in properly managing these files in reference to retention.

In reference to N D Sup Ct Admin Rule 19, I would like to voice my hesitancy in the North Dakota Courts moving to open access of documents from the www.ndcourts.gov website. I have attached the points submitted to committee, during the review and approval process:

- 1) As chair of the Retention Schedule Sub-Committee, we discussed this level of access at length. Our overall consensus was to continue to provide "practical obscurity" to parties engaged in the court process by making any interested person travel to county courts to review pleadings. Senator Krebsbach, who was a member of our sub-committee, during these discussions, was strongly in agreement with the same.

- 2) Based on the research completed during my Fellowship project, there was strong support for a balance between transparency and access to records. The recommendation of evidence based research advocated for a very deliberate review of each potential effect of electronic access to case records versus transparency of the court and the effect that access would have on the judicial process and the protection of parties privacy.
- 3) In advocating for access to case records to remain at the Courthouse level, this would preserve the integrity of the case and provide a level of privacy for parties to use the legal process. Research reports parties may be reluctant to use the legal system if the records are readily available via electronic means.
- 4) The survey findings during my research also noted practicing attorneys in opposition to electronic access of case records citing a desire to have an opportunity to review/act on pleadings prior to their disclosure to the general public. They were concerned about repercussions of representation if information became available to the public prior to them having adequate time to review new filings based on the demands of their workload.
- 5) Jury Process - as Clerk of Court it is routine that prospective jurors report, during voir dire, using the current web site and available information to research the case in which they are summoned to report. Some jurors report using this mechanism at most jury trial selection process. Second, the media is already making numerous requests to the court for records and reporting in all forms of media, the case facts. Jurors report frequently using social media, and paper media as research mechanisms, prior to reporting for jury selection. How will the jury process be affected if all records become available online? How will this affect a parties right to a fair and impartial trial by jury? Will this cause an increase in Change Of Venue motions for the court?
- 6) Marsy's Law – this new law was implemented on December 1, 2016, which is a recognized constitutional right. Victims are not always conferred with prior to the commencement of a criminal case, but routinely they assert their Marsy Law rights as the case proceeds. Therefore, a natural consequence of timing of the victim asserting their rights and the current proposal of immediate electronic access to all case records that are not restricted, will expose the victim. In essence, this would nullify the protections afforded victims under Marsy's Law.
- 7) Technology advances versus slow deliberate process of law changes. Historically, law changes have been a slow and methodical process. Technology advances by leaps and bounds and many times technology is far ahead of legal and procedural changes. How will this fact play out with an access policy that provides for immediate access to case records? An access policy that allows transparency of the courts but requires an effort by the general public to visit a courthouse location provides some additional protections to the lags in the system and process.

A current example is the recent requirement that the property and debt listing in divorce

cases now be filed confidentially. This law change does not address the fact that the same information is cited in the Complaint, the Findings of Fact, Conclusions of Law and Order for Judgment and Judgment. Thus, the parties are not getting the intended protection of privacy of the property and debt listing and further procedure needs to be developed in order to capture the intended protections. If remote access is available to the general public, the spirit of the law is negated.

8) Confidential Information accessible on the internet. Identity theft has been an issue experienced by other states who chose this level of access. Based on reports from the IT director the court's data is mined at a high volume. Are court users providing confidential information in the required formats? The current rule waives protection if not presented properly by the filers.

9) There are current incidences of publication of court documents on social media sites, wherein individuals attempt to "litigate" the case in public opinion via social media. This is currently occurring and the rate in which this occurs may increase substantially if individuals are no longer required to request records, but have open access to records via the internet.

10) Compliance with procedures – can we assure records are being managed correctly in all 53 counties, to ensure the protections afforded by rule/law are being complied with? I would recommend a period of checks and balances to ensure consistency and correct procedures are being followed in all 53 counties. A recent audit was conducted of one "event" in which the security type of "confidential" should have been used. As reported by the State Court Administrator, there was an alarming number of cases that pulled to this report.

11) Staffing resources – with the ongoing shortfall of staffing resources in the clerk's office has this lead to unintentional errors or oversights in the proper management of court documents. There is extreme pressure to process documents within short timelines which leads to errors or oversights being made, in addition to constant disruptions within the work environment. Offering access to documents via the internet will allow consumers to spend countless hours surfing files/documents and potentially misuse information. Requiring interested patrons to make formal requests for document and/or visit the local courthouses, decreases substantially the misuse of court information and documents.

Respectfully Submitted,
Susan Hoffer
Clerk
Ward County District Court
(701)857-6600