

From: [Johnson, Scott](#)
To: [Miller, Penny](#)
Subject: Notice of Comment - Supreme Court No. 20180118
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STATE OF NORTH DAKOTA

Ms. Miller,

I offer the following comments with regard to the above-mentioned *Notice of Comment* and have highlighted wording as well as listing them by the section drafted and/or redrafted:

1. Administrative Rule 19, Section 3. b. 2. Case Record: any document, action or information that is collected, received or maintained by a clerk of court connected to a judicial proceeding. It may include an index, calendar, docket, register of actions, official record of the proceeding, order, decree, judgment or **minute order**.
Administrative Rule 41, Section 2.0. c. 2. Case Record: any document, action or information that is collected, received or maintained by a clerk of court connected to a judicial proceeding. It may include an index, calendar, docket, register of actions, official record of the proceeding, order, decree, judgment or **minute order**.

Comment: I have highlighted the change in wording in our current definition from “minute” to “minute order” in the drafts. The current definition associated with “minute” as a part of the court record is located in AR 41, Section 2. (a) 2. The addition of the word “order” appears to imply a specified order type and may have a basis in model language from another jurisdiction. I suggest maintaining the word “minute” as is outlined in the current definition within AR 41 without the addition of the word “order”.

2. Administrative Rule 19, Section 10. Administrative Record Retention and Disposal Procedures (Paragraph 2). A record series must not be disposed of before the time approved in the administrative records retention schedule. If a situation warrants early disposal of a record within a record series, the custodian may **petition** the State Court Administrator for early disposal of that record.

Comment: I suggest that the word “petition” is generally reserved for the Supreme Court and that it may be more appropriate for the custodian to “request permission from” or “consult with” the State Court Administrator for early disposal of that record.

3. Administrative Rule 19, Section 12. Transfer of Court Records to the State Archives.

Comment: I suggest rewording the first sentence of the paragraph to state: “The State Court Administrator will develop procedures for the transfer of court records with archival value to the State Archivist.”

Additionally, the last sentence of the paragraph states that: “The State Archivist **shall complete** a certification for archival transfer and sit it to the clerk or judge after all records have been transferred.” Unless there

is specified requirement (statutory or other) for the completion of such a certification; I don't believe that a court rule can compel the State Archivist to complete such a certification. It may be more appropriate to develop and agreement with and/or request that a certification be completed by the State Archivist.

4. Administrative Rule 19, Section 5. b. if the record is confidential, destruction by __ method that renders the content irretrievable, such as burning, shredding, pulverizing, sanitizing or overwriting; or....

Comment: The draft is missing a word. I suggest adding "**a**" to the sentence as drafted.

Thank you for the opportunity to comment. If you questions, please let me know.

Scott Johnson
Unit 1