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Penny Miller, Clerk of the Supreme Court
600 East Boulevard Avenue
Bismarck, ND 58505-0530

RE Public Comments Regarding Proposed Adoption of a new Administrative Rule 41

Dear Friends,

I appreciate the opportunity to provide comments regarding a petition to adopt a new Rule 41.

I have been a solo practice attorney for about 17 years. As a solo practice attorney I do rely heavily upon open records to the Courts. My main reason is that when I come upon something new, that I have not worked on before, I like to look for a similar case that I can use as a sample or guideline to help give me insight into how other attorneys have handled this type of situation.

With that said though, I do have a concern with the change to Rule 41 allowing the general public anonymous access to case records remotely. I have a couple reasons for this concern.

I fear that this level of access would be abused by people who are on-line stalkers. Some users may be stalking somebody for a vindictive or spiteful purpose or they may simply be snooping through another's personal affairs for their own amusement or to anonymously embarrass somebody. (Cyber bullying comes to mind as I write this.)

Many court files have information that people feel compelled to provide to the Court in furtherance of or in defense of a legal matter. Some folks have a difficult time exposing their secrets to the Court even for legitimate legal purposes as part of their case. To know that this information may become available to their friends and neighbors and complete strangers, who have no need for the information, may cause folks to become less forthright to their own detriment.

For example, information that is put into an affidavit and filed with the Court is not public information; it is private information that is provided to the Court for a specific

purpose and that is to inform the court as to the specific facts of a case. It is not information that should be printed off and passed around from table to table at the bar and then in the morning left at the local coffee shop so everybody in town can know about a person's troubles and then delivered to the local paper for an article about something of public concern.

I know the court depends upon the candor of the attorneys and the truthfulness of the litigants for the administration of justice. Can we though, rely upon the courts for discretion in the handling of such information?

The Court has a system in place for sealing records for various purposes, such as deferred imposition of sentence, etc. Once downloaded though, these records become the permanent property of the viewer who has no obligation to seal that record, ever.

As you look to adopt a new Rule 41, I would ask that you please consider some sort of limitation as to the remote and anonymous accessibility of court records. Suggestions would be a limit on the number of downloads per day or a nominal fee per download.

I like the current system where an individual has to invest their own time to travel to the Court House to get a paper copy or view an on-line copy of a record. This effort makes the individual place a value on the information retrieved.

Already, there is some level of remote accessibility in that a person can go to any courthouse in the state to get or review a copy of a record. All of district clerk of court offices have a public access terminal with access to all state court records. I am unsure if this access is available with municipal court clerks, but I do think it should be.

I do appreciate the efforts of the government to become more open and to provide information to the public. I understand that you are trying to help keep the public informed about what is happening in the court system. I feel though that the information of the individual litigants that come to court should be handled with a bit more discretion than anonymous remote accessibility would allow.

I appreciate your having listened to my thoughts.

Much thanks,

A handwritten signature in black ink that reads "Lyle P. Thomason". The signature is written in a cursive, slightly slanted style.

Lyle P. Thomason