

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

NOTICE OF COMMENT

Supreme Court No. 20220170

**Amendments to N.D. Sup. Ct. Admin. R. 19 Regarding Court Records Management Program and 41 Regarding Access To Court Records; and N.D.R.Juv.P. 19 Regarding Juvenile Records**

[¶1] Beginning in 2018, the Court considered amendments to N.D. Sup. Ct. Admin. R. 19 regarding the court records management program and adoption of a new N.D. Sup. Ct. Admin. R. 41 regarding access to court records (Supreme Court No. [20180118](#)). Amendments to Administrative Rule 19 were adopted effective July 1, 2019. A new Administrative Rule 41 was adopted effective January 1, 2020. On January 9, 2020, the Court suspended the anonymous remote access to district court records allowed in Administrative Rule 41.

[¶2] The Court referred the rule to the Court Services Administration Committee for review, which recommended amendments to Administrative Rule 41 on September 12, 2021. The Court reviewed and further revised Administrative Rule 41 and considered amendments to Administrative 19 and N.D.R.Juv.P. 19 regarding juvenile records.

[¶3] The current proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20220170>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal.

[¶4] **IT IS ORDERED**, any person wishing to comment on the proposals may do so by email to Petra H. Mandigo Hulm, Clerk of the Supreme Court, at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) or in writing addressed to 600 E. Boulevard Ave., Bismarck, ND 58505-0530, no later than **Monday, July 25, 2022**.

[¶5] The Supreme Court of the State of North Dakota convened with the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

[¶6] Dated: June 9, 2022

/s/ Petra H. Mandigo Hulm  
Clerk  
North Dakota Supreme Court

1 **Administrative Rule 41 – Access to Court Records**

2 Effective Date: \_\_\_\_\_

3 **Section 1. Introduction**

4 The longstanding public policy of the State of North Dakota is that records of public or  
5 governmental entities are public, open and accessible for inspection. This rule  
6 implements the constitutional open records provision for the judicial branch. To do so, the  
7 supreme court through this rule exercises its constitutional authority to provide for  
8 management of judicial branch records by adopting the structure and many of the  
9 procedures applicable to the rest of state government.

10 By this rule, the court exercises its authority under N.D.Const. [art. XI, § 6](#) and [art. VI, §](#)  
11 [3](#). Unless another procedure is specifically provided in this rule, the procedures set out in  
12 [N.D.C.C. §44-04-18 \(2021\)](#) for access to records of other public entities are expressly  
13 adopted as the procedures for accessing court records. Statutory amendments after the  
14 effective date of this rule are not applicable to the judicial branch unless expressly  
15 adopted by an amendment to this rule.

16 The procedures adopted by reference to [N.D.C.C. §44-04-18](#) are to be read applying the  
17 definitions provided in this rule. These procedures include the reasonable fees that may  
18 be charged, the permitted form of request, the reasonable time for response, the number  
19 of copies that will be provided, and other requirements. Under [N.D.C.C. §44-04-18\(6\)](#),  
20 any request for records must comply with any applicable court orders or rules relating to  
21 discovery or privilege.

22 [Cross ref: N.D. Const. Art. I, sec. 9; N.D. Const. Art. I, sec. 12; N.D. Const. Art. XI, sec. 6;  
23 N.D.C.C. Ch. 44-04; N.D.C.C. §§ 27–02–08 -10.]

24 **Section 2. Definitions.**

25 (a) “Record” means recorded information of any kind, regardless of the physical form or  
26 characteristic by which the information is stored, recorded, or reproduced, which is in the  
27 possession or custody of a court of this state and which has been received or prepared for  
28 use in connection with public business or contains information relating to public  
29 business. “Record” does not include unrecorded thought processes or mental impressions,  
30 but does include preliminary drafts and working papers. “Record” does not include  
31 records that have been disposed of under court records management rules, or records to  
32 which a court has access but which are not a part of the court records as defined in this  
33 rule.

34 (b) “Confidential record” means all or part of a record that is either expressly declared  
35 confidential or is prohibited from being open to the public.

- 36 (c) “Exempt record” means all or part of a record that is neither required by law to be  
37 open to the public, nor is confidential, but may be open in the discretion of the court.
- 38 (d) “Court record” means a record that is an administrative record or a case record.
- 39 (e) “Case record” means a record relating to a particular judicial proceeding, including an  
40 index, calendar, docket, register of actions, official record of the proceeding, order, decree,  
41 judgment or minute order.
- 42 (f) “Administrative record” means a record that relates to the management, supervision  
43 or administration of a court.
- 44 (g) “Remote access” means remote internet access to a court record, including electronic  
45 search, inspection, or copying information, without a physical visit to a court facility.
- 46 (h) “Bulk distribution” means the distribution of all, or a significant subset, of the  
47 information in court records without modification or compilation.
- 48 (i) “Compiled information” means information that is derived from the selection,  
49 aggregation or reformulation of some specified subset of data from more than one case  
50 record.

51 **Explanatory Notes.**

52 Prior versions of this rule referred to documents, actions, and information and were not  
53 consistent with how the Century Code defines records. This definition of “record” is  
54 copied from [N.D.C.C. § 44-04-17.1\(16\)](#) (2021) but modified to include only records in the  
55 possession of a court of this state. “Confidential record” and “exempt record” are also  
56 adopted from the Century Code definitions to facilitate classifying court records into the  
57 same structure of prohibited disclosure (confidential records), discretionary disclosure  
58 (exempt records), and presumptively required disclosure (all other records).

59 The definitions of “court record,” “case record,” and “administrative record” are  
60 substantially revised to derive from the definition of “record” and refer to a class of  
61 “record” by content.

62 “Remote access” is defined in this rule so that the court may provide convenient, self-  
63 service access to certain court records. This definition is intended to apply to anonymous  
64 or unauthenticated internet users but not to a user of an internet terminal provided in a  
65 court facility. This definition is not intended to apply to a telephone, letter or email  
66 request requesting records. The scope of records available by remote access may be  
67 narrower than the scope of records available through a courthouse terminal or individual  
68 request.

69 **Section 3. Access to Court Records**

70 **(a) Court Records**

71 Unless otherwise provided by this rule, court records are open and accessible upon  
72 request consistent with [N.D.C.C. § 44-04-18 \(2021\)](#).

73 **(b) Case Records**

74 (1) A court's register of actions, docket or index must disclose the existence of any  
75 case record that is a confidential record or exempt record. Upon a finding that such  
76 disclosure would endanger an individual, a court may delay disclosure for a period  
77 of time corresponding to the duration of the likely danger.

78 (2) Case records filed before the March 1, 2009, effective date of [N.D.R.Ct. 3.4](#) may  
79 contain information that must be redacted under [N.D.R.Ct. 3.4\(a\)](#). Such case  
80 records are confidential records and may be disclosed consistent with [N.D.C.C. §](#)  
81 [44-04-18.10](#) (2021).

82 (3) Bulk distribution of case records may be permitted if the records are not  
83 confidential records.

84 (4) Upon request and payment of the reasonable cost of compiling and providing  
85 the information, a person may request compiled information from case records in a  
86 format other than the format in which they are maintained.

87 (5) Any request for compiled information or bulk distribution of case records must  
88 be made to the state court administrator. The request must identify the  
89 information requested, describe the requestor's purpose for requesting the  
90 information, explain how the purpose will serve public education or another public  
91 purpose, and describe how the requestor will provide for appropriate access  
92 limitations and security of any records that may be provided in response.

93 (6) The following case records are confidential records:

94 (A) A record the disclosure of which is prohibited by federal law, state law, court  
95 rule, applicable case law, or a court order specifically identifying the record.

96 (B) A declaration, affidavit, sworn testimony or record of proceedings in support  
97 of the issuance of a search or arrest warrant pending the return of the  
98 warrant.

99 (C) A complaint or associated arrest or search warrant to the extent  
100 confidentiality is ordered by the court under [N.D.C.C. § 29-05-32](#) or [N.D.C.C.](#)  
101 [§ 29-29-22](#).

102 (D) A record filed with the court for in-camera examination pending disclosure.

- 103 (E) A record maintained in relation to a Child Relinquishment to Identified  
104 Adoptive Parent matter brought under [N.D.C.C. Ch. 14-15.1](#).
- 105 (F) A record maintained in relation to a matter involving:  
106 (i) an application for a domestic violence protection order under [N.D.C.C. §](#)  
107 [14-07.1-02](#);  
108 (ii) a petition for a disorderly conduct restraining order under [N.D.C.C. Ch.](#)  
109 [12.1-31.2](#) sought on the basis of alleged domestic violence; or  
110 (iii) a petition for a sexual assault restraining order under [N.D.C.C. § 12.1-](#)  
111 [31-01.2](#).  
112 Orders of the court in these proceedings are confidential only in matters in  
113 which the initial petition was dismissed summarily by the court without a  
114 contested hearing.
- 115 (G) A record of a deferred imposition of sentence under [N.D.R.Crim.P. 32.1](#) or  
116 pretrial diversion under [N.D.R.Crim.P. 32.2](#) after the matter has been  
117 dismissed.
- 118 (H) A record of a case in which the court found no probable cause for the  
119 issuance of a criminal complaint.
- 120 (I) Records containing the following protected information, unless exempted  
121 from redaction by [N.D.R.Ct. 3.4\(c\)](#):  
122 (i) except for the last four digits, social security numbers, taxpayer  
123 identification numbers, and financial account numbers,  
124 (ii) except for the year, birth dates, and  
125 (iii) except for the initials, the name of an individual known to be a minor,  
126 unless the minor is a party, and there is no statute, regulation, or rule  
127 mandating nondisclosure.
- 128 (J) The property and debt listing of the parties to a divorce as provided by  
129 [N.D.C.C. § 14-05-24.3](#).
- 130 (K) Any criminal record ordered sealed under [N.D.C.C. Ch. 12-60.1](#);
- 131 (L) Any employment, household or financial information provided in an  
132 application for indigent defense services.
- 133 (7) The following case records are exempt records:
- 134 (A) A record of the names of qualified or summoned jurors and contents of jury  
135 qualification forms;
- 136 (B) Addresses, phone numbers, email addresses of jurors;
- 137 (C) A record of voir dire of jurors;

138 (D) A judge or court employee's work material, including personal calendars,  
139 communications to or from law clerks, bench memoranda, notes, work in  
140 progress, draft documents and non-finalized documents; and

141 (E) Any record submitted for filing is exempt until it is filed and remains  
142 exempt if its filing has been rejected.

143 (8) If the court receives a request under this rule from a federal, state, or local  
144 official acting in the exercise of their official duties and powers, to examine a  
145 confidential or exempt court record, and such access is specifically authorized by  
146 law, the court may disclose the requested record if the request is in writing and  
147 contains sufficient assurances that the request is within the scope of the legal  
148 authorization.

149 (9) Unless restricted by order of the court, parties to an action may examine  
150 records filed in the action.

151 **(c) Administrative Records.**

152 (1) Records maintained concerning individuals who are court employees, or who  
153 perform volunteer services for the court, are open in consistent with [N.D.C.C. §](#)  
154 [44-04-18.1](#) and N.D. Supreme Court Policy 120.

155 (2) Job applicant records are open to the extent consistent with N.D.C.C. §§ 44-04-  
156 18.1, 44-04-18.4, and 44-04-18.27 (2021).

157 (3) The following administrative records are confidential records:

158 (A) The name of a patron of the North Dakota Supreme Court Law Library or  
159 the North Dakota Legal Self Help Center or information sufficient to  
160 identify a patron or the subject about which a patron requested information;

161 (B) A record relating to a request for an opinion from the Judicial Ethics  
162 Advisory Committee, other than a formal opinion;

163 (C) Information concerning an employee grievance appeal to the personnel  
164 policy board.

165 (4) The following administrative records are exempt records.

166 (A) All security plans, codes and other records that provide for the security of  
167 information, individuals, or property in the possession or custody of the  
168 courts against theft, tampering, improper use, illegal releases, trespass, or  
169 physical abuse or violence are exempt records consistent with N.D.C.C. §§  
170 [44-04-24](#), [25](#) & [27](#).

171 (B) Preliminary and draft reports concerning court operations and other pre-  
172 decisional documents are exempt records. Final administrative documents

173 and reports concerning the operation of the court system are open for public  
174 inspection and copying by the custodian on court premises. Consistent with  
175 [N.D.C.C. § 44-04-18](#)(9) and (10), preliminary draft reports, and pre-  
176 decisional documents relating to court operations, are no longer exempt  
177 records once the draft reports and pre-decisional documents are circulated to  
178 any court policy advisory committee or to the public for comment.

179 (C) Remote access user records. Any record that would disclose that a user of a  
180 remote or electronic access system has access to a particular court record is  
181 an exempt record. Record access information is accessible by the public only  
182 on a showing of good cause under subsection 4(b).

183 (D) Proprietary and licensed material. Consistent with [N.D.C.C. §§ 44-04-18.4](#)  
184 and [-18.5](#), computer programs or other records that are subject to  
185 proprietary rights or license agreements are exempt records and may be  
186 disclosed only in accordance with the terms and conditions of any applicable  
187 agreements, licenses, or court order. Consistent with [N.D.C.C. § 44-04-18](#)(3),  
188 no record may be excluded from public access solely because access is  
189 provided by programs or applications subject to licensing agreements, or  
190 because the recordkeeping system is subject to proprietary rights.

191 (E) Judicial branch training records and reports. Evaluation materials and  
192 records generated by participants in judicial education programs such as  
193 test scores, educational assessments, practical exercise worksheets, and  
194 similar materials are exempt records.

195 (F) Party, witness and crime victim contact information gathered and recorded  
196 by the court for administrative purposes, including telephone numbers and  
197 e-mail, street and postal addresses are exempt records.

198 (G) Consistent with [N.D.C.C. § 44-04-18.24](#), any record maintained within a  
199 legislative bill tracking system is exempt.

## 200 **Explanatory Notes.**

201 For certain case types, including juvenile court and mental health cases, all records in a  
202 case file are restricted by statute.

203 Parties who enter into bulk distribution agreements with the court may have access to  
204 birthdate, street address and social security number information upon certifying  
205 compliance with laws governing the security of protected information. Such laws include  
206 the federal Fair Credit Reporting Act, the Gramm Leach Bliley Act, the USA Patriot Act  
207 and the Driver's Privacy Protection Act.

208 Warrants. Under [N.D.R.Crim.P. 41\(c\)\(1\)\(D\)](#), a search warrant must be executed within  
209 ten days. In contrast, an arrest warrant may be outstanding for months or years. All



210 records supporting issuance of a search warrant are confidential pending return of the  
211 search warrant. Under [N.D.C.C. § 29-05-32](#) and [N.D.C.C. § 29-29-22](#), the district court  
212 may declare confidential the complaint, any associated arrest or search warrant, and  
213 supporting records. Unless there is an order under [N.D.C.C. §29-29-22](#), a search warrant  
214 and supporting records are only confidential until the warrant has been executed. An  
215 arrest warrant and supporting records are not confidential without an order under  
216 [N.D.C.C. §29-05-32](#).

## 217 **Section 4. Limiting Access to Case Records**

### 218 **(a) Request to Restrict Access.**

219 (1) A request to the court to declare a case record to be a confidential record may be  
220 made by any party to a case, by the individual about whom information is present  
221 in the case record, or on the court's own motion on notice as provided in subsection  
222 5(f)(3).

223 (2) The court must decide whether there are sufficient grounds to overcome the  
224 presumption of openness of case records and prohibit access according to applicable  
225 law.

226 (3) In deciding whether to restrict access the court must consider that the  
227 presumption of openness may only be overcome by an overriding interest. The  
228 court must articulate this interest along with specific findings sufficient to allow a  
229 reviewing court to determine whether the closure order was properly entered.  
230 Considerations should include:

231 (A) the risk of injury to individuals,

232 (B) individual privacy rights and interests,

233 (C) proprietary business information, and

234 (D) public safety.

235 (4) Any access restriction must be no broader than necessary to protect the  
236 articulated interest. The court must consider reasonable alternatives declaring a  
237 record confidential, such as redaction or partial restrictions, and the court must  
238 make findings adequate to support the restriction. The court may not deny access  
239 to an entire record solely on the ground that the record contains confidential or  
240 closed information.

241 (5) In restricting access the court must use the least restrictive means that will  
242 achieve the purposes of this rule and the needs of the requestor.

243 (6) If a victim, as defined in [N.D.Const. Art. I, § 25\(4\)](#) requests, all victim contact  
244 information in a criminal case record must be redacted.

245 (7) If the court concludes, after conducting the balancing analysis and making  
246 findings as required by subsection 4(a)(3), that the interest of justice will be served,  
247 it may prohibit remote access to an individual defendant's electronic case record in  
248 a criminal case:

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

250 (B) if the defendant is acquitted.

251 If the court grants a request to restrict remote access to an electronic case record in  
252 a criminal case, the search result for the record must display the words "Internet  
253 Access Prohibited under N.D.Sup.Ct.Admin.R. 41." Such records remain available  
254 by in-person request at a court facility.

255 **(b) Request for Access.**

256 (1) A request for access to a confidential record or a record previously withheld as  
257 exempt may be made by any member of the public or access may be considered on  
258 the court's own motion after notice as provided in subsection 4(c).

259 (2) In deciding whether to allow access, the court must consider whether there are  
260 sufficient grounds to grant access under applicable constitutional, statutory and  
261 case law. In deciding this the court must consider the standards outlined in  
262 subsection 4(a).

263 **(c) Form of Request.**

264 (1) A request under this section must be made by a written motion to the court.

265 (2) If the request is for a case record, the requestor must give notice to all parties in  
266 the case.

267 (3) The court must require notice to be given by the requestor or another party to  
268 any identified victims in a criminal case and any individuals or entities identified  
269 in the information that is the subject of the request. When the request is for access  
270 to information to which access was previously prohibited under subsection 4(a), the  
271 court must provide notice to the individual or entity that requested that access be  
272 prohibited.

273 **Section 5. Methods of Access to Court Records.**

274 **(a) Methods of Access.**

275 Unless otherwise provided in this rule, access to records will be consistent with the terms  
276 of [N.D.C.C. § 44-04-18](#).

277 **(b) Remote access.**

278 In order to reduce administrative burden on the court and to provide greater public  
279 access to records, the court may provide remote access to court records that are not  
280 confidential records.

281 As a result of insufficient compliance with redaction requirements, the following records  
282 are not available through remote access:

- 283 (1) Any document not available by remote public access prior to January 1, 2020;  
284 (2) Transcripts prepared for an appeal where there has been an assertion of rights in the  
285 trial or appellate court under [Article I, Section 25, of the North Dakota Constitution](#);  
286 (3) Audio or video recordings;  
287 (4) Documents received but not filed by the clerk of the supreme court or district court.

288 **(c) Access to court records at a court facility.**

289 (1) A public access terminal will be available at each county courthouse for use by  
290 the public to access to court records stored in the Odyssey system. Upon receipt of  
291 a request for court records, court personnel may initially direct the person  
292 requesting records to the public access terminal.

293 (2) Request for access to other records. Any person desiring public access to a court  
294 record that is not available on the public access terminal may request the record  
295 from the clerk of court or the state court administrator. If a request is not in  
296 writing, court staff may require a written clarification if disclosure of the records  
297 requires evaluation by the court. The request must clearly identify the record  
298 requested so that the record custodian can locate the record with reasonable effort.  
299 Continuing requests for a document not yet in existence may not be considered.  
300 The record custodian may not ask the motive or reason for requesting the records  
301 or for the identity of the person requesting public records.

302 **(d) Response to request to access case records.**

303 A clerk of court is not required to allow access to more than ten case files per day per  
304 requestor but may do so in the exercise of the clerk's discretion if the access will not  
305 disrupt the clerk's primary function. If a request for access and inspection is granted, the  
306 clerk may set reasonable time and manner of inspection requirements that ensure timely  
307 access while protecting the integrity of the records and preserving the affected office from  
308 undue disruption. The inspection area must be within full view of court personnel  
309 whenever possible. A person inspecting records will be directed to remain in the court  
310 facility until the records are returned and examined for completeness.

311 **(e) Response by court to request to access case records.**

312 If a clerk determines there is a question about whether a case record may be disclosed, or  
313 if a written request is made under subsection 4(a) for a ruling by the court after the clerk  
314 denies or grants an access request, the clerk must refer the request to the court for  
315 determination. The court must use the standards listed in subsection 4(a) to determine  
316 whether to grant or deny the access requested.

317 **(f) Response to request to access administrative records.**

318 The state court administrator may set reasonable time and manner of inspection  
319 requirements that ensure timely access while protecting the integrity of administrative  
320 records and preserving the affected office from undue disruption. If there is doubt about  
321 whether an administrative record may be an exempt record or a confidential record, the  
322 matter must be referred to the state court administrator for determination. The state  
323 court administrator must use the standards listed in subsection 4(a) to determine  
324 whether to allow access to the record.

325 **Section 6. Obligations of Vendors Providing Information Technology Support to**  
326 **a Court to Maintain Court Records.**

327 (a) If the court contracts with a vendor to provide information technology services  
328 to gather, store, or provide access to court records, the contract must require the  
329 vendor to comply with this rule. For purposes of this section, “vendor” includes a  
330 state, county or local governmental agency that provides information technology  
331 services to a court.

332 (b) By contract the vendor will be required to notify the court of any requests for  
333 compiled information or bulk distribution of information, including the vendor’s  
334 requests for such information for its own use.

335 **Explanatory Note**

336 Rewritten rule incorporating open records procedures from the North Dakota Century  
337 Code adopted \_\_\_\_. Rewritten rule adopted effective January 1, 2020. Previous rule  
338 adopted on an emergency basis effective October 1, 1996; Amended and adopted effective  
339 November 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; March 15, 2009; March  
340 1, 2010; March 1, 2012; March 1, 2015; March 1, 2016; October 1, 2016; March 1, 2017;  
341 May 1, 2017; and August 1, 2017.

342 The court anticipates this rule will be reviewed regularly to preserve the appropriate  
343 balance between public access to government records and legally protected security and  
344 privacy interests.

345 Records stored on an electronic communications device for a non-governmental purpose  
346 permitted by N.D. Supreme Court Policy 121 are not subject to disclosure under this rule.

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

350 Appendix amended effective August 1, 2001, to reflect the name change of State Bar  
351 Board to State Board of Law Examiners. Appendix amended effective August 1, 2017, to  
352 add a reference to N.D.C.C. § 14-05-24.3 and to remove a reference to § 50-06-05.1.

353 Appendix amended effective January 1, 2020 to add a reference to N.D.C.C. ch. 12-60.1  
354 and 12.1-34; §§ 12.1-41-14, 14-02.1-03.3; ch. 14-09.3; §§ 14-12.2-24, 14-20-35, 27-20-51,  
355 27-20.1-22 and 30.1-28-03.1; N.D.R.Juv. P. 17 and 19, Administrative Rules 44 and 54;  
356 Admission to Practice R. 13 and N.D.R. Lawyer Discipl. 1.2 and 6.1.

357  
358 **SOURCES:** Court Services Administration Committee Minutes of January 18, 2019;  
359 January 26, 2018; November 3, 2017, pages 2-3; September 22, 2017, pages 1-3; January  
360 26-27, 2017, page 17; August 14, 2015, September 23, 2015; Joint Procedure Committee  
361 Minutes of September 28, 2018, pages 18-19; April 27, 2017, pages 7-11; September 29-  
362 30, 2016, pages 6-9, 28-29; May 12-13, 2016, pages 22-25; January 28-29, 2016, pages 2-7;  
363 September 24-25, 2015, pages 15-16, 20-21; April 23-24, 2015, pages 8-10; April 24-25,  
364 2014, page 27; April 28-29, 2011, pages 9-12; September 23-24, 2010, pages 16-20;  
365 September 24-25, 2009, pages 8-9; May 21-22, 2009, pages 28-44; January 29-30, 2009,  
366 pages 3-4; September 24, 2008, pages 2-6; January 24, 2008, pages 9-12; October 11-12,  
367 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005, pages 6-16; April  
368 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January 29-30, 2004, pages 3-8;  
369 September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-12. Court Technology  
370 Committee Minutes of June 18, 2004; March 19, 2004; September 12, 2003; Conference of  
371 Chief Justices/Conference of State Court Administrators: Guidelines for Public Access to  
372 Court Records; National Center for State Courts and State Justice Institute Best  
373 Practices for Court Privacy Policy Formulation.

374

375 **STATUTES AFFECTED:**

376

377 **CONSIDERED:**

378 N.D. Const. Art. I, §§ 9, 12, & 25, Art. XI, § 6; N.D.C.C. Ch. 44-04.

379

380 **CROSS REFERENCE:**

381 Statutes, court rules and policies, and federal regulations making certain records  
382 confidential, in whole or in part, include the following.

383 **North Dakota Century Code**

384 12-60.1 Sealing Criminal Records

385 12.1-32-07.2(2) Records and papers concerning deferred imposition of sentence when  
386 guilty plea is withdrawn or guilty verdict set aside

387 12.1-32-09(3) Notice specifying defendant as a dangerous special offender for sentencing  
388 purposes

389 12.1-34 Fair treatment standards for victims and witnesses

390 12.1-35-03 Information identifying a child victim of a crime

391 12.1-41-14 Motion to vacate and expunge conviction

392 14-02.1-03.1(3), (4), (11) Records involving judicial authorization for abortion for  
393 unmarried minor

394 14-02.1-03.3 Privacy of woman upon whom an abortion is performed or attempted

395 14-05-24.3 Property and debt listing in a divorce case

396 14-09.3 Uniform Deployed Parents Custody and Visitation Act

397 14-09.1-06 Mediation proceedings concerning contested child support, custody or  
398 visitation

399 14-09.2-06 Parent Coordinator proceedings

400 14-12.2-24 Nondisclosure of information

401 14-15-16(4) Adoption proceedings

402 14-15.1 Child Relinquishment to Identified Adoptive Parent proceedings

403 14-20-35 Confidentiality of genetic testing

404 14-20-54 Paternity proceedings

405 23-07.6-11 Confinement proceedings for those with communicable diseases

406 23-02.1-27 Certain information in birth and death certificates

407 25-03.1-43 Mental health commitments

408 25-03.3-03 Commitment proceedings for sexually dangerous individuals

409 27-20-51 Juvenile court records

410 27-09.1-12(4) Jury selection records

411 27-20-51 Inspection of court files and records

412 27-20.1-22 Confidentiality of Guardianship of a Child

413 29-10.1-30, -31 Grand jury proceedings

414 30.1-11-01 Wills deposited for safekeeping

415 30.1-28-03.1 Confidentiality - Reports - Personal information  
416 37-01-34 Recorded military discharge papers  
417 39-08-01.6 Criminal record – Seal – Exception  
418 39-33-05 Permitted disclosures of department of transportation records  
419 40-38-12 Library records – Open records exception  
420 **Court Rules and Policies**  
421 [N.D.R.Ct. 3.4](#) (Privacy Protection for Filings Made with the Court)  
422 N.D.R.Civ.P. 26(c) Protective orders  
423 N.D.R.Crim.P. 32(c) Presentence investigation reports  
424 N.D.R.Crim.P. 32.1 Deferred imposition of sentence records  
425 N.D.R.Crim.P. 44(b) Ex parte application for financial assistance  
426 N.D.R.Juv.P. 17 Juvenile Court Lay Guardian Ad Litem  
427 N.D.R.Juv.P. 19 Juvenile Records  
428 [N.D.Sup.Ct.Admin.R. 19](#) Court Records Management  
429 [N.D.Sup.Ct. Admin.R. 40](#) (Access to Recordings of Proceedings in District Court  
430 Administrative Rule 44 Informal Complaint Procedure  
431 Administrative Rule 54 Judicial Ethics Advisory Committee  
432 Administrative Policy 120 Personnel Records  
433 Administrative Policy 121 Electronic Communication Devices  
434 Admission to Practice R. 13 Public Records  
435 N.D.R. Lawyer Discipl. 1.2 Grounds for Discipline  
436 N.D.R. Lawyer Discipl. 6.1 Records  
437 R. Jud. Conduct Comm. 6 Confidentiality of Proceedings  
438 **Federal Regulations**  
439 22 C.F.R. Section 51.33 Passport records  
440 42 C.F.R. Part 2 Substance Use Treatment Records  
441 45 C.F.R. Part 164 Mental Health Records  
442

## Administrative Rule 19 - COURT RECORDS MANAGEMENT PROGRAM

Effective Date: ~~8/11/2021~~\_\_\_\_\_

### **Section 1. Statement of Authority and Policy.**

(a) Under N.D. Const. art. VI, § 3, the supreme court has authority to promulgate rules of procedure to be followed by all courts of this state, including rules regarding the administration of court records. The legislative assembly has encouraged this process under N.D.C.C. §§ 27-02-05.1 and 54-46-06.

(b) A goal of the North Dakota judicial system is to establish a uniform judicial records management program.

(c) The supreme court recognizes the need to provide a court records policy that specifically addresses the retention and disposition of court records. This records retention and disposal procedure is established to meet this administrative goal.

### **Section 2. Administrative Responsibilities.**

(a) The state court administrator is the court records administrator and is responsible for developing a retention and disposition schedule of court records. The state court administrator may obtain the services of the state records administrator to develop and monitor the record disposal report identified in section 9 and to otherwise provide program services described in N.D.C.C. ch. 54-46.

(b) The clerk of district court in each county is responsible for the retention and disposition of all district court case records in accordance with the case [records retention schedule](#).

(c) The judge of a municipal court or a clerk designated by the judge is responsible for the retention and disposition of all municipal court case records in accordance with the case [records retention schedule](#).

(d) The administrative records custodian is responsible for the retention and disposition of all administrative records in accordance with the administrative records retention schedule. Each district and municipal court must designate an administrative records custodian to manage retention and disposition of the administrative records under the court's jurisdiction. The state court



administrator must designate one or more administrative records custodians to manage retention and disposition of administrative records of the commissions, boards, committees, and offices under the supervision of the supreme court.

### **Section 3. Scope of Supreme Court Rule.**

(a) This rule applies to all court records under the jurisdiction of the clerks of district court, municipal judges, and to commissions, boards, committees, and offices under the supervision of the supreme court.

~~(b) Court records: the sum of all administrative and case records in the judicial branch. As used in this rule, "record" has the same meaning as defined under N.D.Sup.Ct.Admin.R.41.~~

~~(1) Administrative record: court records that pertain to management, supervision or administration of the court and are not part of a case record.~~

~~(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. These may have been collected in a case management system that is used to track information. Case records may contain both public and confidential information. Case records do not include records that have been disposed of under court records management rules, or records to which a court has access but which are not a part of the court records as defined in this rule.~~

### **Section 4. Permanent Retention Periods.**

(a) Court records assigned "permanent" retention periods must be retained indefinitely by the clerk or judge having jurisdiction over the case record or by the administrative record custodian. The permanent retention periods are subject to a review process consistent with N.D.R.Proc.R. 8.6.

(b) Subsection 4(a) does not prohibit the clerk or judge having jurisdiction over the case records assigned permanent retention periods or the administrative record custodian with responsibility over administrative records assigned permanent

retention periods from depositing such record with the state archivist for preservation under section 12.

### **Section 5. Disposition of Court Records.**

The term "disposition" means:

- (a) transfer of a record to the possession of the state archivist under the procedure in section 12;
- (b) if the record is confidential, destruction by a method that renders the content irretrievable, such as burning, shredding, pulverizing, sanitizing or overwriting; or
- (c) if the record is not confidential, destruction by ordinary means, such as landfill, recycling or deleting.

### **Section 6. Case Records Disposition Record.**

The clerk or judge having jurisdiction over case records must keep a record of the disposition of any case record under the case records retention schedule. This record must indicate the title of the record series, a description of the contents of the case record, the inclusive years of the records disposed, and the date and the means of disposition.

### **Section 7. Case Records Disposition Process.**

The state court administrator will provide each clerk or judge having jurisdiction over case records with a case [records retention schedule](#). The case records retention schedule must identify and describe each record series, provide the retention period based upon the fiscal, legal, administrative, and archival value of the records, and describe the method of destruction for each series that may be destroyed. The state court administrator shall file a copy of the case records retention schedule with the clerk of the supreme court. The case records retention schedule constitutes approval for disposition of all records that have met the timeframes established in the schedule.

### **Section 8. Procedures to Modify Record Retention Values.**

The following procedures apply when adding, changing, or deleting a record series from the court [records retention schedules](#).

- (a) The person suggesting the changes must complete the Record Series Description, State Form Number 2042, with the exception of the legal value, fiscal value, archival value, and records control number.
- (b) The completed Record Series Description must be sent to the state court administrator who must obtain the advice of the state auditor, attorney general, state archivist and state records administrator, to determine the administrative, legal, fiscal, and archival values of the records.
- (c) A draft of the proposed addition, modification, or deletion of a record series must be submitted to the court services administration committee for comments.
- (d) The state court administrator must issue a revision to the retention schedule if appropriate.

### **Section 9. Case Records Disposal Procedures.**

Each clerk or judge having jurisdiction over case records must dispose of records as designated in the case records retention schedule and must complete a case records disposal report provided by the state court administrator or state records administrator. The duty to dispose of case records is subject to the availability of staff and to legislative appropriations. Each case record must be reviewed and approved for disposition by the clerk or judge having jurisdiction over the court records. Unless otherwise noted in the case records retention schedule, all non-permanent case records must be destroyed in accordance with subsections 5(b) and (c). The state court administrator, in cooperation with the information technology department, must establish procedures and standards for the efficient and effective destruction of electronic case records.

A record series must not be disposed of before the time approved in the retention schedule. If a situation warrants early disposal of a record within a record series, the clerk or judge may make a request to the state court administrator for early disposal of that record or may obtain an order from the judge of the court.

## **Section 10. Administrative Record Retention and Disposal Procedures.**

The state court administrator will provide an administrative records retention schedule to all administrative records custodians. Each custodian must retain the records for the retention period set forth in the administrative records retention schedule and should dispose of records after the retention period has expired, subject to staff availability and legislative appropriations. Unless otherwise designated in the administrative records retention schedule, all non-permanent records must be destroyed in accordance with subsections 5(b) and (c). The state court administrator, in cooperation with the information technology department, must establish procedures and standards for the efficient and effective destruction of electronic administrative records. 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 make a request to the state court administrator for early disposal of that record.

## **Section 11. Extension of Retention Period.**

Any person, including the court, may request an extension of the retention period of a court record by completing a form to be provided by the state court administrator's office and submitting the form to the court with jurisdiction over the case records or to the state court administrator for a request related to administrative records. The court will forward the request to the state court administrator's office for consideration. The request must be submitted no later than 90 days prior to the record meeting the retention deadline as set forth in the record retention schedule. The request must state the reason for the extension request, the fiscal, legal, administrative, or archival value of the records that justifies the extension, and the additional retention time requested.

## **Section 12. Transfer of Court Records to the State Archives.**

The state court administrator will provide in the clerk of court procedures manual procedures for the transfer to the state archives of court records determined to be of archival value. The clerk of court, judge, or administrative records custodian will contact the state archivist when the records are ready for transfer. Arrangements will be made by the state archivist to take possession of the records within 60 days

of notice to the state archivist. The state archivist may, upon request, complete a certification for archival transfer and send it to the clerk or judge after all records have been transferred.

### **Section 13. Microfilming Records.**

Records microfilmed under this section must be maintained in accordance with the state standards for microfilming North Dakota public records developed by the information services division. A copy of the standards must be included in the North Dakota clerk of court manual.

1 RULE 19. JUVENILE RECORDS

2 Effective Date: ~~7/1/2021~~ \_\_\_\_\_

3 **(a) Records Definition. As used in this rule, “record” has the same meaning**  
4 **as defined in N.D.Sup.Ct.Admin.R41.**

5 **(a) (b) Records Confidential.**

6 (1) Juvenile court records are confidential and not open to inspection or  
7 release except as provided by N.D.C.C. § 27-20.2-21 and the rules of the  
8 supreme court.

9 (2) Disclosure of papers, reports, notes, files, or records may be restricted or  
10 authorized by court order, except that judge, referee or court personnel work  
11 material and notes may not be released to anyone under any circumstances.

12 **(b) (c) Disclosure of Records.**

13 (1) In General. N.D.C.C. § 27-20.2-21(1) lists the persons and entities who  
14 may routinely inspect juvenile court files and records.

15 (2) Court Order. Upon written request or motion a judge or referee of the  
16 juvenile court may permit inspection or release of pertinent information of all  
17 or some portion of a court record to the persons and entities listed in N.D.C.C.  
18 § 27-20.2-21(2) and the following:

19  
20 (A) persons or agencies conducting pertinent research studies;

21 (B) the victim or a member of the victim's immediate family on behalf  
22 of the victim or to an insurance company representing the victim;

23 (C) the military if a release of information has been signed by the  
24 subject of the petition or the parents of the subject if the child is under  
25 18 years of age.

26 (3) Social Service Reports. Social service reports (960's) may be released  
27 under Rule 12 to attorneys representing the parties involved. Unless  
28 otherwise ordered by the court, names of persons reporting the alleged  
29 incident must be deleted from the reports. See N.D.C.C. Section 50-25.1-  
30 11(1)(d).

31 (4) Statistical Information. Statistics and other general information which do  
32 not identify parties and which are generated in the normal course of business  
33 may be released to any party, including the press. Requests for special  
34 reports or information must be forwarded to the State Court Administrator.

35 (5) Drug and Alcohol Treatment Records. Drug and alcohol treatment records  
36 within a file and which are confidential under 42 CFR Part 2 may not be  
37 disclosed unless:

38  
39 (A) the person who is the subject of the records has signed a valid  
40 consent form authorizing disclosure;

41 (B) the court has found there is good cause for disclosure and has  
42 issued an authorizing order in accordance with 42 CFR Section 2.64 or  
43 2.66, as applicable; or

44 (C) the court has issued an order authorizing disclosure in accordance  
45 with 42 CFR Section 2.63 or 2.65, as applicable.

46 For purposes of this paragraph, "disclosure" includes duplication of records  
47 permitted under Rule 19(c).

48 (6) Research. The chief justice may authorize the release of information  
49 from juvenile records for research purposes when the Supreme Court has  
50 requested such research, or a research project has been proposed, and the  
51 chief justice has determined that the research results may be used to improve  
52 court response to issues of delinquency, deprivation, minor guardianship, or  
53 termination of parental rights.

54 **~~(e)~~ (d) Copying Records.**

55 (1) Documents not original to the juvenile court may not be duplicated except:

56  
57 (A) for purposes of conducting a hearing, documents may be duplicated  
58 but must be returned to the court after the hearing; or

59 (B) upon written approval of the agency which originally created the  
60 document; or

61 (C) upon order of the court.

62 (2) Documents generated by the juvenile court may be duplicated as  
63 appropriate to meet the informational needs of the entities or persons listed  
64 in N.D.C.C. § 27-20.2-21(1) or any other person or entity considered  
65 appropriate by the court.

66 **~~(d)~~ (e) Early Destruction of Records.** A party who is the subject of a delinquency  
67 or unruly proceeding may petition the court for early destruction of records. The  
68 state's attorney of the county in which the records are held must be notified of the  
69 request. The judge may order the early destruction upon a showing of good cause to  
70 destroy the records by the party. The records may not be destroyed if it is known  
71 that the subject of the motion has criminal charges pending before any other court.