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**From:** Oberst, Paulette E. <poberst@nd.gov>  
**Sent:** Thursday, July 7, 2022 3:32 PM  
**Subject:** Comments to Proposed Amendments to N.D. Sup. Ct. Admin. R. 41

Dear Clerk Hulm:

On behalf of the Department of Human Services, Child Support Division, I am writing to oppose the proposed changes to Administrative Rule 41, specifically proposed Section 3(b)(8):

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

The proposal is much more complex than the current provision, Section 5(e)(4):

(4) This rule does not preclude access to court records by federal, state, and local officials, or their agents, examining a court record in the exercise of their official duties and powers.

As state officials, Child Support workers need access to certain court records, such as orders terminating parental rights, adoption decrees, and other juvenile court orders, so we can determine if a support obligation should no longer accrue, consistent with our responsibility under N.D.C.C. § 50-09-02.1(2) to maintain the official records of all child support amounts owed, collected and distributed. It is imperative that we obtain this information so that obligors are not erroneously charged for support that is no longer owed and obligees are not put in a situation whereby they must repay support that was disbursed to them in error. Accordingly, when necessary, we will contact a clerk of court by email and ask that the clerk provide us with the specified document. The process was developed based on discussions with court administration and has been working well for us. Child Support is mindful of the sensitive nature of these documents and our workers know to request them only when necessary for the administration of our program and how to safeguard them upon receipt. We are, after all, subject to stringent safeguarding requirements of our own.

In addition to its complexity, proposed Section 3(b)(8) is operationally unclear. Other than specifying it must be in writing, the provision gives no indication as to the form of the request under this section, nor to whom it must be submitted. Hopefully, the intent is not that the written request must be in the form of a motion to the judge, which would be onerous for Child Support. The “sufficient assurances” language is so vague as to be subject

to different interpretation and application by whomever is charged with reviewing the request and determining whether the record will be disclosed.

If proposed Section 3(b)(8) is adopted, we respectfully request that court administration meet with us so that we can jointly develop procedures for requesting and obtaining these court records without false starts and with minimal disruption to operations on both sides. Alternatively, we request additional Odyssey security so we can have direct access to these records. Having direct access to these records would align our access to court records with access, including automated access, to records of other state and local government agencies pursuant to N.D.C.C. § 50-09-08.2(1)(g).

Thank you for the opportunity to comment.

Paulette Oberst

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