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CLERK OF THE SUPREME COURT  
STATE OF NORTH DAKOTA

July 22, 2022

Ms. Petra H. Mandigo Hulm  
Clerk of Supreme Court  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0530

RE: Supreme Court Docket No. 20220170 - Amendments to N.D. Sup. Ct.  
Admin. R. 19 and 41

Dear Clerk Hulm:

On behalf of the North Dakota Office of Attorney General, I write to express concern at a lack of clarification or resolution to the issue of anonymous remote access in N.D. Sup. Ct. Admin. R. 41.

As noted in the Notice of Comment for Supreme Court No. 20220170, on January 1, 2020, the Court adopted Administrative Rule 41, which provided anonymous remote access to district court records. The Court suspended this remote access on January 9, 2020.

In the current version of Rule 41, no changes have been made to the remote access provision to address the extensive security concerns created by the roll-out of anonymous remote access. No additional proposed revisions have addressed redactions within those records or review of the records prior to making them accessible through remote means. Between January 1, 2020, and January 9, 2020, the public was made aware that their private, personal information is not uniformly redacted among various filings, lawsuits, and county courts. Rule 41 should either be amended to remove remote access until these issues have been resolved, or should also address the proactive steps the Court will take to protect highly sensitive information prior to making information accessible to the public.

Section 3(b)(2) of proposed Rule 41 notes that case records filed before March 1, 2009, may have confidential information and are to be treated as confidential records, however, it makes no note of the voluminous amounts of confidential information which was discovered to have not been redacted in case records filed after March 1, 2009, leaving those open to disclosure. The proposed classification of "confidential records" as utilized in Section 3 is insufficient and should be revised to include information required to be redacted under N.D.R.Ct. 3.4(a) no matter the date of filing.

Section 5(b) of proposed Rule 41 provides that "any document not available by remote public access prior to January 1, 2020, if not available through remote access" due to "insufficient compliance with redaction requirements." There has been no proposed mechanism requiring

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review of the records for the redaction of confidential information prior to providing them through either remote or other means in either Rule 41 or 19. Additionally, there appears to be no requirement that the documents and filings be reviewed for compliance with redaction requirements prior to providing remote public access. The harm to the public if confidential information is released without review and additional redaction far outweighs the administrative tasks of reviewing and redacting records prior to disclosure. The lack of review of records coupled with authority to permit "bulk distribution" of case records or remote public access leaves the citizens of North Dakota vulnerable to having their confidential, personal information data-mined and utilized for nefarious purposes or purposes contrary to the law.

My office requests that the Court review the proposed Rule 41 and 19 and add additional safeguards for confidential information related to remote access, or remove anonymous remote access altogether until the Court is able to address these concerns.

Sincerely,



Mary Kae Kelsch  
Assistant Attorney General  
Division Director- State & Local Division