

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20230047

Amendments to North Dakota Rules of Court 3.4 Regarding Privacy Protections for Filings Made with the Court and North Dakota Supreme Court Administrative Rule 41 Regarding Access to Court Records

[¶1] On February 7, 2023, the Joint Procedure Committee submitted proposed amendments to North Dakota Rules of Court 3.4 regarding privacy protections for filings made with the court and North Dakota Supreme Court Administrative Rule 41 regarding access to court records. The proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20230047>. 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. The Court allowed comment on the proposal. The Court considered the matter, and

[¶2] IT IS HEREBY ORDERED, that, as further amended by the Court, the amendments to North Dakota Rules of Court 3.4 and North Dakota Supreme Court Administrative Rule 41 are ADOPTED effective April 1, 2023.

[¶3] The Supreme Court of the State of North Dakota convened March 15, 2023, with, the Honorable Jon J. Jensen, Chief Justice, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte and the Honorable Douglas A. Bahr, Justices, directing the Clerk of the Supreme Court to enter the above order.

Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Definitions.

(1) “Confidential” means information in a court record as described in Rule 3.4(b)(1) or as ordered by the court, which is protected from public access but remains accessible to the court and the parties.

(2) “Redact” means to remove confidential information from a court record to protect it.

(3) “Sealed” means court records that are protected from public access, party access and access by unauthorized court personnel.

(b) Redacted Filings.

(1) ~~In General~~ Mandatory. Unless the court orders otherwise, ~~in an electronic or paper filing with the court~~ a court record that contains an individual's social-security number, taxpayer-identification number, ~~or~~ birth date, the name of an individual known to be a minor, ~~or~~ a financial-account number, including any credit, debit, investment or retirement account number, ~~a party or nonparty making the filing~~ must include only:

(A) the last four digits of the social-security number and taxpayer-identification number;

(B) the year of the individual's birth;

(C) the minor's initials, unless the law requires the public disclosure of the minor's full name; and

(D) the last four digits of the financial-account number; and

23 ~~(2E) Victim Information.~~ If if a victim requests, all victim contact information
24 must be redacted from documents to be filed with the court in a criminal or delinquency
25 case.

26 ~~(b 2) Responsibility of Party or Nonparty to Redact.~~ A party or nonparty making a
27 filing with the court is solely responsible for ensuring that ~~protected~~ information required
28 to be redacted under Rule 3.4 (b)(1) does not appear on the filing.

29 ~~(e 3) Exemptions from the Redaction Requirement.~~ The redaction requirement
30 does not apply to the following:

31 ~~(1 A) a financial-account number or real property address that identifies the~~
32 ~~property allegedly subject to forfeiture in a forfeiture proceeding~~ any case record not
33 accessible to the public under N.D. Sup. Ct. Admin. R. 41(3)(b)(6) and (7);

34 ~~(2 B)~~ the record of an administrative or agency proceeding;

35 ~~(3 C)~~ the record of a court or tribunal, if that record was not subject to the
36 redaction requirement when originally filed;

37 ~~(4 D)~~ a filing covered by Rule 3.4 ~~(d)~~;

38 ~~(5) a court filing that is related to a criminal matter and that is prepared before the~~
39 ~~filing of a criminal charge or is not filed as part of any docketed criminal case;~~

40 ~~(6) an arrest or search warrant;~~

41 ~~(7) a charging document and a declaration filed in support of a charging document;~~

42 ~~(8) the name of an individual known to be a minor when the minor is a party, and~~
43 ~~there is no statute, regulation or rule mandating nondisclosure; and~~

44 ~~(9 E)~~ a defendant's date of birth in a court filing that is related to criminal matters,

45 non-criminal motor vehicle and game and fish matters, and infractions.

46 ~~(d c)~~ Filings Made Under Seal Procedure to Protect from Public Access.

47 (1) Parties may not seal otherwise public documents by consent or by labeling
48 them “sealed” or “confidential”.

49 (2) Motion. A party may move that a filing be designated “confidential” or
50 “sealed.” In its motion, the party must show that protection of the filing is justified under
51 the factors listed in N.D. Sup. Ct. Admin. R. 41(4)(a). A motion to protect a filing from
52 public access, and any supporting documents, must be filed as “sealed” until the court
53 makes its ruling. A court record may not be sealed under these rules when reasonable
54 redaction will adequately resolve the issues and protect the parties.

55 (3) The Court Order. On motion, or on its own, the court may order that a filing be
56 made under seal without redaction designated “confidential” or “sealed.” The court may
57 later unseal order that the filing be made public or order the person who made the filing to
58 file a redacted version for the public record.

59 ~~(e) Protective Orders. For good cause, the court may by order in a case:~~

60 ~~(1) require redaction of additional information; or~~

61 ~~(2) limit or prohibit a nonparty's remote electronic access to a document filed with~~
62 ~~the court.~~

63 ~~(f d)~~ Filing a Confidential Information Form.

64 (1) In General. A filing that contains redacted information must be filed together
65 with a confidential information form (shown in Appendix H) that identifies each item of
66 redacted information and specifies an appropriate identifier that uniquely corresponds to

67 each item listed. The form will be confidential except as to the parties or as the court may
68 direct. Any reference in the case to a listed identifier will be construed to refer to the
69 corresponding item of information.

70 (2) Defendant Information. In a criminal case, the prosecutor must file a
71 confidential information form that includes, when known, the defendant's social security
72 number.

73 (g e) Non-conforming Documents.

74 (1) Waiver. A person waives the protection of Rule 3.4 ~~(a)~~(b) as to the person's
75 own information by filing it without redaction and not under seal or without moving that
76 the information be otherwise protected from public access.

77 (2) Sanctions. If a party fails to comply with this rule, the court on motion ~~of~~
78 ~~another party~~ or on its own ~~motion~~, may order the pleading or other document to be
79 returned to the party for reformation prior to filing, with an extension of any deadline to
80 complete the filing. If the document has been filed, and an order to reform is not obeyed,
81 the court may order the document stricken.

82 EXPLANATORY NOTE

83 Rule 3.4 was adopted effective March 1, 2009. Rule 3.4 was amended, effective
84 March 15, 2009; March 1, 2010; May 1, 2017; March 1, 2021; April 1, 2023.

85 Parties should limit the amount of ~~protected~~ information required to be redacted
86 under paragraph (b)(1) they include in court filings. ~~This rule~~ Paragraph (b)(1) requires
87 parties to redact ~~protected~~ designated information when its inclusion in a filing cannot be
88 avoided.

89 This rule's Paragraph (b)(1)'s redaction requirements are intended to exclude
90 ~~protected designated~~ information from public disclosure. Unless a document is also
91 placed in a non-restricted file, redaction of documents filed in cases that are confidential
92 by law or rule is not required.

93 The term "~~financial-account number~~" includes ~~any credit, debit or electronic fund~~
94 ~~transfer card numbers, and any other financial account number.~~ Documents containing
95 information redacted ~~protected information under paragraph (b)(1)~~ must be filed together
96 with a confidential information form under subdivision (f d) when a party is required by
97 statute, policy or rule to include ~~the protected~~ information required to be redacted under
98 paragraph (b)(1) in the document. For example, N.D.C.C. § 14-05-02.1 requires a divorce
99 decree to contain the social security numbers of the parties to the divorce. Under
100 subdivision (f d) , a party to a divorce case may comply with this statute and the redaction
101 requirements of this rule by filing a confidential information form and a redacted version
102 of the decree in the public part of the file.

103 A new subdivision (a) was adopted, effective April 1, 2023, to add a definitions
104 section to the rule.

105 A new subdivision (b) was adopted, effective April 1, 2023, to consolidate the
106 rule's provisions relating to redaction.

107 ~~Subdivision (a) Paragraph (b)(1), formerly paragraph (a)(1),~~ was amended,
108 effective March 1, 2010, to eliminate the requirement to redact addresses in criminal
109 matters.

110 ~~Subdivision (a) Subparagraph (b)(1)(E), formerly paragraph (a)(2),~~ was amended

111 adopted, effective May 1, 2017, to require, upon request of the victim, the redaction of all
112 victim contact information from documents before they may be filed with the court in a
113 criminal or delinquency case. This right is granted by N.D. Const. Art. I, § 25(1)(e).
114 “Victim” is defined in N.D. Const. Art. I, § 25(4).

115 ~~Subdivision (b) Paragraph (b)(2), formerly subdivision (b),~~ was adopted, effective
116 March 1, 2010, to indicate it is the responsibility of a party or nonparty making a court
117 filing to refrain from including ~~protected information~~ required to be redacted under
118 paragraph (b)(1) in the filing. The clerk of court is not required to review a document
119 filed with the court for compliance with this rule.

120 ~~Subdivision (c), formerly subdivision (b), was amended, effective March 1, 2010,~~
121 ~~to add a redaction exemption for the name of a minor when the minor is a party and there~~
122 ~~is no statute, regulation or rule mandating nondisclosure of the minor's name.~~

123 Subparagraph (b)(1)(c) was amended, effective April 1, 2023, to require the use of
124 a minor’s initials unless the law requires public disclosure of the minor’s full name.

125 ~~Subdivision (c), formerly subdivision (b) Subparagraph (b)(3)(E), formerly~~
126 ~~subdivision (c),~~ was amended, effective March 1, 2010, to add a redaction exemption for
127 a defendant's date of birth in a court filing that is related to criminal matters, non-criminal
128 motor vehicle and game and fish matters, and infractions.

129 A new subdivision (c) was adopted, effective April 1, 2023, to clarify the process
130 for protecting a filing from public access.

131 ~~Subdivision (f) Subdivision (d), formerly subdivision (f),~~ was amended, effective
132 March 1, 2010, to require that state's attorneys file confidential information forms

133 containing certain defendant information when known.

134 ~~Subdivision (g)~~ Subdivision (e), formerly subdivision (g), was amended, effective
135 March 1, 2010, to allow courts to order reformation of documents not in conformity with
136 this rule prior to filing.

137 Rule 3.4 was amended, effective March 1, 2021, to delete the term “affidavit” and
138 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
139 15, which allows anyone to make an unsworn declaration that has the same effect as a
140 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
141 for an unsworn declaration.

142 SOURCES: Joint Procedure Committee Minutes of January 12, 2023, pages 2-3;
143 September 30, 2021, page 10; April 29, 2021, pages 2-4; January 28, 2021, pages 19-20;
144 April 24, 2020, pages 4-5; January 26-27, 2017, page 22; September 24-25, 2009, pages
145 3-7; May 21-22, 2009, pages 28-44; January 24, 2008, pages 9-12; October 11-12, 2007,
146 pages 28-30; April 26-27, 2007, page 31.

147 STATUTES AFFECTED:

148 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 31-15, § 14-05-02.1

149 CROSS REFERENCE: N.D.R.Ct. 3.1 (Pleadings); N.D.Sup.Ct.Admin.R. 41

150 (Access to Judicial Records).

RULE 41. ACCESS TO COURT RECORDS

Section 1. Introduction

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

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

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

Explanatory Notes to Section 1.

23 By adopting the procedures in N.D.C.C. § 44-04-18, the court does not adopt
24 the remedies set forth in that section for delay or denial of access.

25 Attorney General opinions are instructive, but not binding on the judicial
26 system.

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

29 Section 2. Definitions.

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

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

41 (c) “Exempt record” means all or part of a record that is neither required by law to
42 be open to the public, nor is confidential, but may be open in the discretion of the court.

43 (d) “Court record” means a record that is an administrative record or a case record.

44 (e) “Case record” means a record relating to a particular judicial proceeding,

45 including an index, calendar, docket, register of actions, official record of the proceeding,
46 order, decree, judgment or minute order.

47 (f) “Administrative record” means a record that relates to the management,
48 supervision or administration of a court.

49 (g) “Remote access” means remote internet access to a court record, including
50 electronic search, inspection, or copying information, without a physical visit to a court
51 facility.

52 (h) “Bulk distribution” means the distribution of all, or a significant subset, of the
53 information in court records without modification or compilation.

54 (i) “Compiled information” means information that is derived from the selection,
55 aggregation or reformulation of some specified subset of data from more than one case
56 record.

57 Explanatory Notes to Section 2.

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

65 The definitions of “court record,” “case record,” and “administrative record” are
66 substantially revised to derive from the definition of “record” and refer to a class of

67 “record” by content.

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

75 Section 3. Access to Court Records

76 (a) Court Records.

77 Unless otherwise provided by this rule, court records are open and accessible upon
78 request consistent with N.D.C.C. § 44-04-18 (2021).

79 (b) Case Records.

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

84 (2) Case records filed before the March 1, 2009, effective date of N.D.R.Ct. 3.4
85 may contain information that must be redacted under N.D.R.Ct. 3.4(a b)(1). Such case
86 records are confidential records and may be disclosed consistent with N.D.C.C. §
87 44-04-18.10 (2021).

88 (3) Bulk distribution of case records may be permitted if the records are not

89 confidential records.

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

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

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

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

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

104 (C) A complaint or associated arrest or search warrant to the extent confidentiality
105 is ordered by the court under N.D.C.C. § 29-05-32 or N.D.C.C. § 29-29-22.

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

107 (E) A record maintained in relation to a Child Relinquishment to Identified
108 Adoptive Parent matter brought under N.D.C.C. Ch. 14-15.1.

109 (F) A record maintained in relation to a matter involving:

110 (i) an application for a domestic violence protection order under N.D.C.C. § 106

111 14-07.1-02;

112 (ii) a petition for a disorderly conduct restraining order under N.D.C.C. Ch. 108
113 12.1-31.2 sought on the basis of alleged domestic violence; or

114 (iii) a petition for a sexual assault restraining order under N.D.C.C. § 12.1-31-01.2.

115 Orders of the court in these proceedings are confidential only in matters in which the
116 initial petition was dismissed summarily by the court without a contested hearing.

117 (G) A record of a deferred imposition of sentence under N.D.R.Crim.P. 32.1 or
118 pretrial diversion under N.D.R.Crim.P. 32.2 after the matter has been dismissed.

119 (H) A record of a case in which the court found no probable cause for the issuance
120 of a criminal complaint.

121 (I) Records containing the following protected information, unless exempted from
122 redaction by N.D.R.Ct. 3.4(e b)(3):

123 (i) except for the last four digits, social security numbers, taxpayer identification
124 numbers, and financial account numbers,

125 (ii) except for the year, birth dates, and

126 (iii) except for the initials, the name of an individual known to be a minor, unless
127 ~~the minor is a party, and there is no statute, regulation, or rule mandating nondisclosure~~
128 law requires the public disclosure of the minor's full name.

129 (J) The property and debt listing of the parties to a divorce as provided by
130 N.D.C.C. § 14-05-24.3.

131 (K) Any criminal record ordered sealed under N.D.C.C. Ch. 12-60.1;

132 (L) Any employment, household or financial information provided in an

133 application for indigent defense services.

134 (7) The following case records are exempt records:

135 (A) A record of the names of qualified or summoned jurors and contents of jury
136 qualification forms;

137 (B) Addresses, phone numbers, email addresses of jurors;

138 (C) A record of voir dire of jurors;

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

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

144 (8) If the court receives a request under this rule from a federal, state, or local
145 official acting in the exercise of their official duties and powers, to examine a confidential
146 or exempt court record, and such access is specifically authorized by law, the court may
147 disclose the requested record if the request is in writing and contains sufficient assurances
148 that the request is within the scope of the legal 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. §§
156 44-04-18.1, 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 the
159 North Dakota Legal Self Help Center or information sufficient to identify a patron or the
160 subject about which a patron requested information;

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

163 (C) Information concerning an employee grievance appeal to the personnel policy
164 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 courts against
168 theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence are
169 exempt records consistent with N.D.C.C. §§ 44-04-24, 25 & 27.

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

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

181 (D) Proprietary and licensed material. Consistent with N.D.C.C. §§ 44-04-18.4 and
182 -18.5, computer programs or other records that are subject to proprietary rights or license
183 agreements are exempt records and may be disclosed only in accordance with the terms
184 and conditions of any applicable agreements, licenses, or court order. Consistent with
185 N.D.C.C. § 44-04-18(3), no record may be excluded from public access solely because
186 access is provided by programs or applications subject to licensing agreements, or
187 because the recordkeeping system is subject to proprietary rights.

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

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

195 (G) Consistent with N.D.C.C. § 44-04-18.24, any record maintained within a
196 legislative bill tracking system is exempt.

197 Explanatory Notes to Section 3.

198 For certain case types, including juvenile court and mental health cases, all records

199 in a case file are restricted by statute.

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

205 Warrants. Under N.D.R.Crim.P. 41(c)(1)(D), a search warrant must be executed
206 within ten days. In contrast, an arrest warrant may be outstanding for months or years. All
207 records supporting issuance of a search warrant are confidential pending return of the
208 search warrant. Under N.D.C.C. § 29-05-32 and N.D.C.C. § 29-29-22, the district court
209 may declare confidential the complaint, any associated arrest or search warrant, and
210 supporting records. Unless there is an order under N.D.C.C. §29-29-22, a search warrant
211 and supporting records are only confidential until the warrant has been executed. An
212 arrest warrant and supporting records are not confidential without an order under
213 N.D.C.C. §29-05-32.

214 Section 4. Limiting Access to Case Records

215 (a) Request to Restrict Access.

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

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

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

- 225 (A) the risk of injury to individuals,
- 226 (B) individual privacy rights and interests,
- 227 (C) proprietary business information, and
- 228 (D) public safety.

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

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

236 (6) If a victim, as defined in N.D.Const. Art. I, § 25(4) requests, all victim contact
237 information in a criminal case record must be redacted.

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

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

243 (B) if the defendant is acquitted.

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

248 (b) Request for Access.

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

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

255 (c) Form of Request.

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

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

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

264 Section 5. Methods of Access to Court Records.

265 (a) Methods of Access.

266 Unless otherwise provided in this rule, access to records will be consistent with the
267 terms of N.D.C.C. § 44-04-18.

268 (b) Remote access.

269 In order to reduce administrative burden on the court and to provide greater public
270 access to records, the court may provide remote access to court records that are not
271 confidential records.

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

274 (1) Any document not available by remote public access prior to January 1, 2020;

275 (2) Transcripts prepared for an appeal where there has been an assertion of rights
276 in the trial or appellate court under Article I, Section 25, of the North Dakota
277 Constitution;

278 (3) Audio or video recordings;

279 (4) Documents received but not filed by the clerk of the supreme court or district
280 court.

281 (c) Access to court records at a court facility.

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

286 (2) Request for access to other records. Any person desiring public access to a

287 court record that is not available on the public access terminal may request the record
288 from the clerk of court or the state court administrator. If a request is not in writing, court
289 staff may require a written clarification if disclosure of the records requires evaluation by
290 the court. The request must clearly identify the record requested so that the record
291 custodian can locate the record with reasonable effort. Continuing requests for a
292 document not yet in existence may not be considered. The record custodian may not ask
293 the motive or reason for requesting the records or for the identity of the person requesting
294 public records.

295 (d) Response to request to access case records.

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

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

305 If a clerk determines there is a question about whether a case record may be
306 disclosed, or if a written request is made under subsection 4(a) for a ruling by the court
307 after the clerk denies or grants an access request, the clerk must refer the request to the
308 court for determination. The court must use the standards listed in subsection 4(a) to

309 determine whether to grant or deny the access requested.

310 (f) Response to request to access administrative records.

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

318 Section 6. Obligations of Vendors Providing Information Technology Support to a
319 Court to Maintain Court Records.

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

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

327 EXPLANATORY NOTE

328 Rewritten rule incorporating open records procedures from the North Dakota
329 Century Code adopted November 1, 2022. Rewritten rule adopted effective January 1,
330 2020; March 1, 2023; April 1, 2023. Previous rule adopted on an emergency basis

331 effective October 1, 1996; Amended and adopted effective November 12, 1997; March 1,
332 2001; July 1, 2006; March 1, 2009; March 15, 2009; March 1, 2010; March 1, 2012;
333 March 1, 2015; March 1, 2016; October 1, 2016; March 1, 2017; May 1, 2017; and
334 August 1, 2017.

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

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

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

344 Appendix amended effective August 1, 2001, to reflect the name change of State
345 Bar Board to State Board of Law Examiners. Appendix amended effective August 1,
346 2017, to add a reference to N.D.C.C. § 14-05-24.3 and to remove a reference to §
347 50-06-05.1. 352 Appendix amended effective January 1, 2020 to add a reference to
348 N.D.C.C. ch. 12-60.1 and 12.1-34; §§ 12.1-41-14, 14-02.1-03.3; ch. 14-09.3; §§
349 14-12.2-24, 14-20-35, 27-20-51, 27-20.1-22 and 30.1-28-03.1; N.D.R.Juv. P. 17 and 19,
350 Administrative Rules 44 and 54; Admission to Practice R. 13 and N.D.R. Lawyer Discipl.
351 1.2 and 6.1.

352 SOURCES: Court Services Administration Committee Minutes of January 18,

353 2019; January 26, 2018; November 3, 2017, pages 2-3; September 22, 2017, pages 1-3;
354 January 26-27, 2017, page 17; August 14, 2015, September 23, 2015; Joint Procedure
355 Committee Minutes of January 12, 2023, pages 2-3; September 28, 2018, pages 18-19;
356 April 27, 2017, pages 7-11; September 29-30, 2016, pages 6-9, 28-29; May 12-13, 2016,
357 pages 22-25; January 28-29, 2016, pages 2-7; September 24-25, 2015, pages 15-16,
358 20-21; April 23-24, 2015, pages 8-10; April 24-25, 2014, page 27; April 28-29, 2011,
359 pages 9-12; September 23-24, 2010, pages 16-20; September 24-25, 2009, pages 8-9;
360 May 21-22, 2009, pages 28-44; January 29-30, 2009, pages 3-4; September 24, 2008,
361 pages 2-6; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27,
362 2007, page 31; September 22-23, 2005, pages 6-16; April 28-29, 2005, pages 22-25; April
363 29-30, 2004, pages 6-13, January 29-30, 2004, pages 3-8; September 16-17, 2003, pages
364 2-11; April 24-25, 2003, pages 6-12. Court Technology Committee Minutes of June 18,
365 2004; March 19, 2004; September 12, 2003; Conference of Chief Justices/Conference of
366 State Court Administrators: Guidelines for Public Access to Court Records; National
367 Center for State Courts and State Justice Institute Best Practices for Court Privacy Policy
368 Formulation.

369 STATUTES AFFECTED:

370 CONSIDERED:

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

372 CROSS REFERENCE:

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

375 North Dakota Century Code

376 12-60.1 Sealing Criminal Records

377 12.1-32-07.2(2) Records and papers concerning deferred imposition of sentence when
378 guilty plea is withdrawn or guilty verdict set aside

379 12.1-32-09(3) Notice specifying defendant as a dangerous special offender for sentencing
380 purposes

381 12.1-34 Fair treatment standards for victims and witnesses

382 12.1-35-03 Information identifying a child victim of a crime

383 12.1-41-14 Motion to vacate and expunge conviction

384 14-02.1-03.1(3), (4), (11) Records involving judicial authorization for abortion for
385 unmarried minor

386 14-02.1-03.3 Privacy of woman upon whom an abortion is performed or attempted

387 14-05-24.3 Property and debt listing in a divorce case

388 14-09.3 Uniform Deployed Parents Custody and Visitation Act

389 14-09.1-06 Mediation proceedings concerning contested child support, custody or
390 visitation

391 14-09.2-06 Parent Coordinator proceedings

392 14-12.2-24 Nondisclosure of information

393 14-15-16(4) Adoption proceedings

394 14-15.1 Child Relinquishment to Identified Adoptive Parent proceedings

395 14-20-35 Confidentiality of genetic testing

396 14-20-54 Paternity proceedings

397 23-07.6-11 Confinement proceedings for those with communicable diseases

398 23-02.1-27 Certain information in birth and death certificates

399 25-03.1-43 Mental health commitments

400 25-03.3-03 Commitment proceedings for sexually dangerous individuals

401 27-20-51 Juvenile court records

402 27-09.1-12(4) Jury selection records

403 27-20-51 Inspection of court files and records

404 27-20.1-22 Confidentiality of Guardianship of a Child

405 29-10.1-30, -31 Grand jury proceedings

406 30.1-11-01 Wills deposited for safekeeping

407 30.1-28-03.1 Confidentiality - Reports - Personal information

408 37-01-34 Recorded military discharge papers

409 39-08-01.6 Criminal record – Seal – Exception

410 39-33-05 Permitted disclosures of department of transportation records

411 40-38-12 Library records – Open records exception

412 Court Rules and Policies

413 N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court)

414 N.D.R.Civ.P. 26(c) Protective orders

415 N.D.R.Crim.P. 32(c) Presentence investigation reports

416 N.D.R.Crim.P. 32.1 Deferred imposition of sentence records

417 N.D.R.Crim.P. 44(b) Ex parte application for financial assistance

418 N.D.R.Juv.P. 17 Juvenile Court Lay Guardian Ad Litem

- 419 N.D.R.Juv.P. 19 Juvenile Records
- 420 N.D.Sup.Ct.Admin.R. 19 Court Records Management
- 421 N.D.Sup.Ct. Admin.R. 40 (Access to Recordings of Proceedings in District Court
- 422 Administrative Rule 44 Informal Complaint Procedure
- 423 Administrative Rule 54 Judicial Ethics Advisory Committee
- 424 Administrative Policy 120 Personnel Records
- 425 Administrative Policy 121 Electronic Communication Devices
- 426 Admission to Practice R. 13 Public Records
- 427 N.D.R. Lawyer Discipl. 1.2 Grounds for Discipline
- 428 N.D.R. Lawyer Discipl. 6.1 Records
- 429 R. Jud. Conduct Comm. 6 Confidentiality of Proceedings
- 430 Federal Regulations
- 431 22 C.F.R. Section 51.33 Passport records
- 432 42 C.F.R. Part 2 Substance Use Treatment Records
- 433 45 C.F.R. Part 164 Mental Health Records