

## Instructions for Requests to Prohibit Remote Public Access to a Defendant's Electronic Court Case Records in a Criminal Case – Dismissed or Acquitted

### Important! Read Before Using this Packet of Forms.

ND Legal Self Help staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

ND Legal Self Help Center forms **aren't** official court forms. Judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to [ndcourts.gov/legal-self-help/finding-a-lawyer](https://ndcourts.gov/legal-self-help/finding-a-lawyer) for information about finding a lawyer to represent you.

When you represent yourself, you're expected to know and follow the law, including:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
  - North Dakota Rules of Civil Procedure;
  - North Dakota Rules of Court;
  - North Dakota Rules of Evidence;
  - North Dakota Administrative Rules and Orders; and
  - Any local court rules.

Links to the state laws, case law, and court rules can be found at [ndcourts.gov](https://ndcourts.gov).

A glossary with definitions of legal terms is available at [ndcourts.gov/legal-self-help](https://ndcourts.gov/legal-self-help).

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

*These instructions and forms **aren't** a complete statement of the law. They cover the basic process to motion a North Dakota state district court to prohibit remote public access to a Defendant's electronic court case record because the criminal charges were dismissed or the Defendant was acquitted. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided. Use these forms and instructions at your own risk.*

## **No Assistance with Court Process in Criminal Cases**

The ND Legal Self Help Center gives information about the court process in **civil** cases **only**. The ND Legal Self Help Center **can't** give assistance with court process in **criminal cases** and **doesn't** have expertise available in this area.

## **Who May Use this Packet of Forms?**

1. An individual charged with a criminal offense (*also called the Defendant*) **and**:
    - a. The charges were dismissed; **or**
    - b. The individual was acquitted;
- and**
2. The individual wants to ask a North Dakota state district court to prohibit remote public access to all of the electronic case records in their criminal case.

**Caution!** A self-represented individual may only represent themselves when using this packet of forms. An individual can perform the functions of a lawyer for themselves at their own risk. This is called legal self-representation.

- An individual **can't** delegate legal self-representation to a non-lawyer. Legal documents signed by a non-lawyer on behalf of a self-represented individual are considered void.

## **What Happens if the Court Prohibits Remote Public Access to the Electronic Case Records in My Criminal Case?**

If the judge or judicial referee assigned to your criminal case decides you meet the requirements, the judge or judicial referee signs an Order.

The order prohibits access to the listing of records and events in your criminal case at [ndcourts.gov](http://ndcourts.gov). “Internet Access Prohibited under N.D.Sup.Ct.AdminR.41” is displayed in place of the listing of records and events.

**Your criminal case is still searchable at [ndcourts.gov/public-access](http://ndcourts.gov/public-access), and the records in your case still available by in-person request at the courthouse.**

## This Packet of Forms **Doesn't** Delete (Expunge) or Seal Your Criminal Records

This packet of forms **doesn't** result in all of the records being deleted (expunged) in the criminal case.

This packet of forms also **doesn't** result in sealing all of the records in the criminal case. (*When criminal records are sealed, disclosure of the existence or content of the records is prohibited.*)

- To research expungement and sealing criminal record options in North Dakota, go to [Expungement](#) and [Sealing Criminal Records](#).

## What Rules Do I Need to Know to Use this Packet of Forms?

[Rule 41, Section 4\(a\) of the North Dakota Supreme Court Administrative Rules](#) includes the requirements for requests to prohibit public access to a Defendant's court record in a criminal case in North Dakota.

- Rule 41, Section 4(a)(7) includes the requirements for requests to prohibit access to electronic court case records when a Defendant's criminal charges were dismissed or the Defendant was acquitted in the criminal case.

[Rule 47 of the North Dakota Rules of Criminal Procedure](#) includes requirements for making Motions in a criminal case in North Dakota.

[Rule 3.2 of the North Dakota Rule of Court](#) also includes requirements for Motions in a criminal case in North Dakota.

[Rule 3.4 of the North Dakota Rules of Court](#) applies to protecting information in documents filed in North Dakota state district court cases.

## Forms in this Packet

1. Notice of Motion to Prohibit Public Access to Records
2. Motion to Prohibit Public Access to Records
3. Brief in Support of Motion to Prohibit Public Access
4. Declaration in Support of Motion to Prohibit Public Access

5. Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access (*proposed*)
6. Confidential Information Form
7. Declaration of Service by Mail
8. Declaration of Office Service

## Before Completing and Signing the Forms

**Review the forms carefully and decide if the forms apply to your situation.** If you don't know if you should use these forms, consult a lawyer who is licensed to practice in North Dakota **and** can agree to represent you.

When you sign the forms, your signature tells the Court that you:

- Made reasonable inquiries about the Motion requirements; **and**
- Based on your inquiries, to the best of your knowledge, information, and belief:
  - You're not presenting the Motion for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
  - The claims, defenses, and other legal contentions in the Motion are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
  - The facts you present in the Motion are supported by evidence or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
  - Denials of any facts in the Motion are warranted on the evidence or are reasonably based on belief or a lack of information.

See [North Dakota Rules of Civil Procedure Rule 11](#) for signature requirements, representations to the Court, and sanctions for motions and other documents presented to a Court.

## Including Protected Information When You Fill Out the Forms

**When you file this Motion with the North Dakota State District Court, all documents, **except** the Confidential Information Form, are available to the public to view.**

Court case records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is protected and required to remain confidential, even if the protected information is part of a public court case record.

**Protected Information is:**

- Social Security Numbers.
- Taxpayer Identification Numbers.
- Birthdates.
- Minor child’s name.
- Financial account numbers.
- Victim contact information in a criminal or delinquency case, **if the victim requests.**
  - Victim contact information means any information that would allow someone to make contact. Contact information includes, but isn’t limited to, names, addresses, phone numbers, email addresses, or places of employment.

**You may need to refer to Protected Information when you fill out the forms. When you refer to Protected Information, write or type only:**

- The last four (4) digits of the social security number and taxpayer identification number.
- The year of birth.
- The minor child’s initials.
- The last four (4) digits of the financial-account number.
- “Victim contact information” to refer to victim contact information in a criminal or delinquency case.


**The district court still needs to have access to the full Protected Information.** Complete the Confidential Information Form with the full Protected Information you reference in the rest of the forms.

The **Confidential Information Form** is filed as a confidential document and isn’t available to the public to view.

**If Your Request to Prohibit Public Access is Granted**

If the North Dakota State District Court grants your request to prohibit remote public access to your electronic court case records in your criminal case, people can still search publically available court records by your name or case number at [ndcourts.gov/public-access](https://ndcourts.gov/public-access).

The public search results will look similar to this:

Criminal Case Records Search Results					
<a href="#">Skip to Main Content</a> <a href="#">Logout My Account</a> <a href="#">Search Menu</a> <a href="#">New Criminal Search</a> <a href="#">Refine Search</a>					Location : State of North Dakota <a href="#">Help</a>
Record Count: 1					
Search By: Defendant Exact Name: on Party Search Mode: Name Last Name: <b>Doe</b> First Name: <b>Jon</b> Middle Name: <b>Alan</b> All All Sort By: Filed Date					
Case Number	Citation Number	Defendant Info	Filed/Location/Judicial Officer	Type/Status	Charge(s)
 <a href="#">09-2013-CR-0000</a>					Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see <a href="http://www.ndcourts.gov/ar41.htm">www.ndcourts.gov/ar41.htm</a>

After clicking on the Case Number, the Register of Actions for your case(s) will look similar to this:

<a href="#">Skip to Main Content</a> <a href="#">Logout My Account</a> <a href="#">Search Menu</a> <a href="#">New Criminal Search</a> <a href="#">Refine Search</a> <a href="#">Back</a>					Location : State of North Dakota <a href="#">Help</a>
REGISTER OF ACTIONS					
PARTY INFORMATION					
Defendant	<b>Doe</b> , <b>Jon</b> , <b>Alan</b> New London, MN 56273		DOB: 1980		
Plaintiff	State of North Dakota				
Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see <a href="http://www.ndcourts.gov/ar41.htm">www.ndcourts.gov/ar41.htm</a>					

The listing of case records and events in your case is replaced with “**Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 – For more information see [www.ndcourts.gov/legal-resources/rules/ndsuptadminr/41](http://www.ndcourts.gov/legal-resources/rules/ndsuptadminr/41).**”

## Definitions

\*\*\*The following definitions are intended to be helpful, but they aren't intended to include every possible meaning of the terms in this section.\*\*\*

**Case Records** – Under Rule 41 of the North Dakota Supreme Court Administrative Rules, case records are records relating to a particular judicial proceeding, including an index, calendar, docket, register of actions, official record of the proceeding, order, decree, judgment or minute order.

**Defendant** – The party in a criminal case who was charged with a criminal offense. To use this packet of forms, the Defendant must have been acquitted or the charges dismissed.

**District Court Judge** – An elected government official who hears and decides civil and criminal cases.

**Judicial Referee** – A judicial officer, appointed by the presiding District Court Judge. The findings and order of the Judicial Referee have the same effect as the findings and order of a District Court Judge until superseded by a written order of a District Court Judge. ([See Rule 13 of the North Dakota Supreme Court Administrative Rules.](#))

**Moving party** – The person bringing the Motion to Prohibit Public Access to court case records. In other words, the individual who completes and signs the forms in this packet. The moving party for this forms set is the Defendant.

**Plaintiff** – In criminal cases, the Plaintiff is the government. For the purposes of this form set, the government is the State of North Dakota. Generally, States Attorneys represent the State of North Dakota in criminal cases.

**Opposing party:** The other parties in the court case. In other words, the parties who didn't bring the Motion. (Also called the Non-moving party.)

**Protected Information** – Under Rule 3.4 of the North Dakota Rules of Court, the following is protected information in documents filed in North Dakota state court cases:

- Social Security Number.
  - **Only** the last 4 digits appear in the document.
- Taxpayer Identification Number.
  - **Only** the last 4 digits appear in the document.
- Birthdate.
  - **Only** the year of birth appears in the document.
- Minor child's name.
  - **Only** the minor child's initials appear in the document.
- Financial account number.
  - **Only** the last 4 digits appear in the document.
- Victim contact information in a criminal or delinquency case, **if the victim requests.**
  - Victim contact information means any information that would allow someone to make contact. Contact information includes, but isn't limited to, names, addresses, phone numbers, email addresses, or places of employment.

**Record** – Under Rule 41 of the North Dakota Supreme Court Administrative Rules, record means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody

of a court of North Dakota and which has been received or prepared for use in connection with public business or contains information relating to public business.

“Record” doesn’t include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. “Record” doesn’t 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.

**Victim** – A person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" doesn’t include the accused or a person whom the court finds wouldn’t act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

## Steps to Prepare, Serve and File the Forms in the Packet

### STEP 1: You, the Defendant, Prepare the Forms

#### Notice of Motion to Prohibit Public Access to Records

This is the required written notice to the party that prosecuted the criminal case.

- **Top of Form (Caption)**
  - Enter the county and judicial district from the criminal case.
  - Fill in your name as Defendant in the criminal case.
  - Enter the criminal case number.
  
- **Date and Signature**
  - Date and sign the form.
  - Complete the lines following your signature.

#### Motion to Prohibit Public Access to Records

This is the required written request to the Court to prohibit remote public access to the electronic court records in the criminal case(s).

- **Top of Form (Caption)**
  - Fill in the Caption exactly as you filled the Caption for the Notice of Motion.



- **Date and Signature**
  - Date and sign the form.
  - Complete the lines following your signature.

#### **Brief in Support of Motion to Prohibit Public Access**

This is the required written document that explains why you, the Defendant, should have the Motion granted. A Brief takes the relevant laws or rules and applies them to the facts of your particular situation.

- **Top of Form (Caption)**
  - Fill in the Caption exactly as you filled the Caption for the Notice of Motion.
- **Complete Paragraphs 1 through 13 of the Brief.**
- **Date and Signature**
  - Date and sign the form.
  - Complete the lines following your signature.

#### **Declaration in Support of Motion to Prohibit Public Access**

This is your required written statement of fact. The Declaration must be dated and signed by you, the Defendant.

- **Top of Form (Caption)**
  - Fill in the Caption exactly as you filled the Caption for the Notice of Motion.
- **Complete Paragraphs 1 through 7 of the Declaration.**
- **Date and Signature**
  - Date and sign the form.
  - Complete the lines following your signature.

#### **Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access**

This is your **proposed** Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access. The Judge or Judicial Referee assigned to your request decides whether to grant your request. The Judge or Judicial Referee also decides whether to use this document.

The **Findings of Fact** are the Judge's or Judicial Referee's written determination of the facts made from the evidence presented in the motion. This explains what facts they found to be true.

The **Conclusions of Law** are the rulings of law made by the Judge or Judicial Referee based on, or in connection with, the Findings of Fact. These are the legal consequences of the facts they found to be true.

The **Order** is your **proposed** Order the Judge or Judicial Referee may sign to prohibit remote public access to your electronic criminal case records.

- **Top of Form (Caption)**
  - Fill in the Caption exactly as you filled the Caption for the Notice of Motion.
- **Leave the Rest of the Form Blank**
  - If the Judge or Judicial Referee uses this form as their Findings of Fact, Conclusions of Law, and Order, the Judge or Judicial Referee completes and signs the form.

#### **Confidential Information Form**

This form lists the full protected information that isn't allowed to appear in other documents filed with the court. This form is a part of the court record that isn't seen by the public.

**See the "Including Protected Information When you Fill Out the Forms" section on Page 4, and the definition of "Protected Information" on Page 7.**

- **Top of Form (Caption)**
  - Fill in the Caption exactly as you filled in the Caption for the Notice of Motion.
- **Fill in all applicable sections of the form**
- **Date and Signature**
  - Date and sign the form.
  - Complete the lines following the signature line.

#### **STEP 2: You, the Defendant, Arrange for Service of Copies of the Completed Forms**

Before the Court can act on your Motion, you must serve a copy of the following completed forms and any exhibits on all parties in the criminal case:

- Notice of Motion to Prohibit Public Access;
- Motion to Prohibit Public Access;

- Brief in Support of Motion to Prohibit Public Access;
- Declaration in Support of Motion to Prohibit Public Access;
- Proposed Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access; and
- Any exhibits (*you might not have any exhibits*).

**Don't serve the Confidential Information Form!** You file this form in **Step 3**.

You can use the Declaration of Service by Mail form or the Declaration of Office Service form, depending on how you choose to complete service.

### **Declaration of Service by Mail**

In order to complete service by mail, the person serving the documents must mail copies of the documents to all parties in the case. The person serving the documents must be at least 18 years old.

If serving the State's Attorney by mail, the person mailing the documents must mail them to the State's Attorney's office. Contact information for State's Attorneys in North Dakota is available at [ndcourts.gov/court-locations](https://ndcourts.gov/court-locations). Click the name of the County for the State's Attorney contact information.

Postage must be first class and pre-paid. The person mailing the documents must complete the Declaration of Service by Mail. Service is complete upon mailing.

- **Top of Form (Caption)**
  - The person who mailed the documents fills in the Caption exactly as the Caption for the Notice of Motion is filled in.
- **Complete Paragraphs 1 through 7 of the Form**
  - The person who mailed the documents fills in paragraphs 1 through 7.
- **Date and Signature**
  - The person who mailed the documents dates and signs the form and completes the lines following their signature.

If more than one party was served, you need a Declaration of Service by Mail completed and signed for each party.

The completed Declaration of Service by Mail is filed with the Clerk of Court in **Step 3**.

### **Declaration of Office Service**

In order to complete office service, the person serving the documents must leave copies of the documents at the office of the party in the case. The person serving the documents must be at least 18 years of age **and** not a party or interested in the criminal case.

If serving the State's Attorney at their office, the person serving the documents must leave the documents in the Office of the State's Attorney for the county in which the original criminal case was filed. Contact information for State's Attorneys in North Dakota is available at [ndcourts.gov/court-locations](https://ndcourts.gov/court-locations). Click the name of the County for the State's Attorney contact information.

- **Top of Form (Caption)**
  - The person who served the documents at the party's office fills in the Caption exactly as the Caption for the Notice of Motion is filled in.
- **Complete Paragraphs 1 through 6 of the Form**
  - The person who served the documents at the party's office fills in paragraphs 1 through 6.
- **Date and Signature**
  - The person who served the documents at the party's office dates and signs the form and completes the lines following their signature.

If more than one party was served, you need a Declaration of Office Service completed and signed for each party.

The completed Declaration of Office Service is filed with the Clerk of Court in **Step 3**.

### **STEP 3: You, the Defendant, File the Original, Completed Forms with the Clerk of Court**

File the following original, completed forms and any exhibits with the clerk of court where the criminal case is filed:

- Notice of Motion to Prohibit Public Access;
- Motion to Prohibit Public Access;
- Brief in Support of Motion to Prohibit Public Access;
- Declaration in Support of Motion to Prohibit Public Access;

- Proposed Findings of Fact, Conclusions of Law, and Order on Motion to Prohibit Public Access;
- Confidential Information Form;
- Any exhibits (*you might not have any exhibits*); and
- Proof of Service Document – file the document to prove the method of service you chose:
  - Declaration of Service by Mail
  - Declaration of Office Service

If you're required to pay a filing fee and can't afford to pay, complete the Fee Waiver Forms available at [ndcourts.gov/legal-self-help/fee-waiver](https://ndcourts.gov/legal-self-help/fee-waiver).

File the completed Fee Waiver Forms at the same time you file your Motion documents.

After your Motion is filed with the Clerk of Court, the Clerk forwards your Motion to the Judge or Judicial Referee for review.

#### **STEP 4: Review by the Judge or Judicial Referee**

##### **If the Motion is Granted**

If the Judge or Judicial Referee decides there are reasonable grounds to prohibit public access, the Judge or Judicial Referee signs a Findings of Fact, Conclusions of Law, and Order.

The Clerk of Court is instructed by the Order to restrict remote public access to the electronic case records in the matter and ensure that public search results for the case records displays the words "Internet Access Prohibited under N.D.Sup.Ct.Admin.R 41."

Members of the public still have access to your criminal case records if they request the records in-person at the courthouse.

##### **If the Motion isn't Granted**

If the Judge or Judicial Referee decides there aren't reasonable grounds to prohibit remote public access, the Judge or Judicial Referee issues an Order denying the motion. The electronic records remain open to remote public access.