State Of North Dakota

County Of _____

In District Court

_____ **Judicial District**

_____
                                    Plaintiff,

vs

_____,
                                    Defendant.

)
)   Case No. _____
)
)
)   **Brief In Support Of**
)   **Motion To Prohibit**
)   **Public Access**
)
)
)

1.   The moving party brings this Motion to ask the Court to enter an Order prohibiting

public access to the records in this case under <u>N.D.Sup.Ct.Admin.R. 41, Section 4(a)</u> and

<u>N.D.R.Ct. 3.4(e</u>) because there are sufficient grounds to overcome the presumption of openness

of court records and allow access to be prohibited.

Facts

2.   The above-named case is one for (*state type of case*) _____.

3.   The moving party is the (*choose one*) ❏ Plaintiff ❏ Defendant ❏ Victim ❏ Other (*if*

you chose "other", state relationship) _____in this case.

4.   The facts that led me to bring this Motion are stated in the Declaration in Support of

Motion to Prohibit Public Access.

Law And Argument

5.   <u>Administrative Rule 41, Section 4(a)</u> states as follows:

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

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

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

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

(A) the risk of injury to individuals,

(B) individual privacy rights and interests,

(C) proprietary business information, and

(D) public safety.

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

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

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

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

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

(B) if the defendant is acquitted.

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

6. [North Dakota Rules of Court 3.4(e](e)) states as follows:

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

(1) require redaction of additional information; or

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

7. Because these records have remained available for open access, the moving party has sustained or is likely to sustain the following harms (*select all that apply*):

❑ **a.** The risk of injury to individuals;

❑ **b.** Individual privacy rights and interests;

❑ **c.** Proprietary business information;

❑ **d.** Public safety;

❑ **e.** Other *(List the harm or harms)*: _____

_____

_____

_____

_____

8. For all harms selected in Paragraph 7, an explanation of how the moving party has sustained or is likely to sustain each harm is stated in Paragraph 4 of the Declaration in Support of Motion to Prohibit Public Access.

9. Because these harms are substantial, there is an overriding interest in protecting the moving party from further harm by (*you may select any or all of the three options (a, b, or c) listed below; Paragraph 9 continues on Pages 4-6*):

❑ **a. Prohibiting access to the entire case.**

❑ **b. Restricting access to the following documents in the above-named case** *(list index number and name of document. Write "NA" next to the index numbers you don't use)***:**

❑(1) Index No. _____ Document Name: _____

❑(2) Index No. _____ Document Name: _____

❑(3) Index No. _____ Document Name: _____

❑(4) Index No. _____ Document Name: _____

❑(5) Index No. _____ Document Name: _____

❑(6) Index No. _____ Document Name: _____

❑(7) Index No. _____ Document Name: _____

❑(8) Index No. _____ Document Name: _____

❑(9) Index No. _____ Document Name: _____

❑(10) Index No. _____ Document Name: _____

❑ **c. Redacting the following information from documents filed in the above-named case** *(write "NA" next to the index numbers you don't use)***:**

❑(1)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location in the document*): _____

Information to redact: _____

❑(2)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location in the document*): _____

Information to redact: _____

❑(3)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(4)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(5)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(6)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(7)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(8)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

❑(9)Index No. _____ Document Name: _____

Paragraph # (*if no paragraph number stated, be as specific as possible regarding the location*

in the document): _____

Information to redact: _____

10. An explanation of how the requested actions listed in Paragraph 9 will protect the

moving party from further harm is stated in Paragraph 5 of the Declaration in Support of

Motion to Prohibit Public Access.

11. The requests from Paragraph 9 are no broader than necessary to protect the moving

party from further harm because (*explain*):

Conclusion

12. Based on the minimal interest in maintaining open access in this matter compared to the substantial harm the moving party has sustained or is likely to sustain because access has been allowed, there are sufficient grounds to overcome the presumption of openness of case records and prohibit access as requested.

Dated _____ .

_____
Signature

_____
Printed Name

_____
Address

_____/_____
City, State, Zip Code   Telephone Number

Email _____