Assessment of North Dakota Trial Court Media Relations Policies and Practices

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Abstract

For over 100 years, researchers and court professionals have written about the importance of public information programs in the judiciary. Yet, recent studies reveal that the public may not fully understand the judicial branch of government and that Americans know the least about the judiciary. This lack of understanding decreases the respect given to the judiciary, and this erosion of confidence results in loss of esteem toward judges and other court professionals.

The need for courts to communicate with the media in order to educate the public can be met with resistance because of Constitutional constraints. The conflict centers around the equitable observance of both the media's First Amendment right to gather and publish news related to the judicial process and the accused's Sixth Amendment right to a fair trial by an impartial jury. Courts have used a number of methods to control the information released to media and access to proceedings. Some of these methods, such as prior restraint, restrictions on broadcast coverage and closed hearing, have been challenged, resulting in key decisions on First and Sixth Amendments issues being handed down by the U.S. Supreme Court and other appellate courts. These decisions have influenced the development of court rules, policies, and practices related to media access to court information.

This research focused on the relationship between the media and trial courts in North Dakota. Three perspectives were considered: 1) North Dakota court perspective, 2) media perspective, and 3) the perspective and best practices of similarly situated states. Existing court rules, policies, and practices regarding media requests for information and the type of media requests being handled by the courts in North Dakota were analyzed. In addition to the policy review, trial court employees were surveyed and a focus group interview conducted with trial

court administrators. Media perspectives of North Dakota court policies in terms of timeliness and quality of responses and limits on the press were gathered through a survey of media representatives. The study also reviewed media guidelines, best practices, rules, and policies adopted by other selected states to make comparisons to North Dakota.

The findings show that the North Dakota Court System has a thorough set of statewide rules and policies that balance the media's right to access information with the rights to a fair trial for defendants and privacy rights for jurors, witnesses, and parties to the case. However, there is no scheduled regular review of these rules and policies and members of the media are not routinely involved when changes are considered. Court employees are generally satisfied with their responses to media requests. Likewise, the media indicated that the courts' responses to information requests are both timely and satisfactory. The unwritten procedure for responding to media requests varies among employees in the seven judicial districts. There are no designated media contacts for the trial courts, either locally or through the Administrative Office of the Courts, and no one is assigned to monitor media reports on court-related topics. Because of this, there is little accountability on the courts for responding to media requests or on the media for accurately disseminating court information. Strengthening court and media relations can be accomplished through training for both court employees and members of the media or through media guides. Neither of these is available in North Dakota.

Based on these findings, North Dakota courts should:

- Establish a periodic review process for media-related court rules and policies
- Develop a process for monitoring media reports
- Develop a statewide media relations plan and local media policies for all judicial districts
- Provide training for court personnel and the media.

I. Introduction

The relationship between the press and government officials in America has never been easy. For example, one exasperated elected official who, by way of explaining that his second term in office would be his last, expressed "a disinclination to be longer buffeted in the public prints by a set of infamous scribblers."[1] That official was the nation's first president, George Washington. Thomas Jefferson was also frustrated with negative, unfair coverage while serving as president. In his second inaugural address he said:

> "During this course of administration, and in order to disturb it, the artillery of the press has been leveled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution so important to freedom and science are deeply to be regretted, inasmuch as they tend to lessen its usefulness and to sap its safety."[2]

Prior to the American Revolution, relations were tense at times between the colonial press and public officials. John Peter Zenger, a journalist working in the 1730s, wrote a story zinging William Cosby, royal governor of New York, because he had fired a judge for ruling opposite his preferred outcome in a trial. Cosby charged Zenger with "seditious libel".[3] In an indicator of press freedoms to come, Zenger was acquitted after the jury found that what the reporter had written was true. During the formative years of a developing nation, the press was often viewed as "an antagonistic gang of thugs whose sole purpose was to inflict pain and misery on sitting public officials, and not to forward the interests of democracy by impartially informing the American people of the doings of their government."[4]

Even with the advent of objective journalism in the 1800s, journalists have held fast to their First Amendment right to expose the details of government's inner-working and infamous

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[1] Jonathan Walters, **Good Press, Bad Press, De-Pressed: *Governing's* Media Survival Guide for Public Officials**, Governing Books, Washington, DC, 2008, page 2.
[2] www.history.org/Almanak/life/politics/tjinaug, Accessed July 22, 2009.
[3] See Note 1 **supra**, page 3.
[4] **Ibid**, page 4.

scandals. But while the media has always covered the government vigorously, the judicial system, until more recently, largely escaped the heightened national scrutiny of the media.

> "For the most part, the courts were able to operate in a relative cocoon, free from those pesky, sensationalist reporters . . . most courts did not have a designated media liaison or a plan to deal with the media . . . and they saw no benefit to initiating contact with media, especially given ethical restrictions on what judicial leaders could talk about."[5]

Yet, for over 100 years, researchers and court professionals have written about the importance of public information programs in the judiciary. Roscoe Pound, one of the fathers of modern court administration, lamented about the need for improved public understanding and confidence in the courts as early as 1906."[6] Today, with the explosion of cable television choices, the 24-hours news cycle, the consolidation of mainstream corporate media, blogs, social networking websites, and other sprawling options on the Internet, not communicating with the public through the media is no longer an option.

> "If the judiciary is to communicate accurately the messages of transparency and accessibility to all, we must understand that the news media is a conduit to our target audiences, most of whom lack much understanding about the way our system of justice works."[7]

In fact, studies reveal that the public may not fully understand the judicial branch of government and that Americans know the least about the judiciary.[8] Bob Egelko, a journalist for the *San Francisco Chronicle* put it this way: "This is a subject on which we all are ignorant—the rules and the procedures, the mechanics of the courts and the law. The public and even the reporters who cover courts find extreme gaps in knowledge."[9] This lack of understanding decreases the

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[5] Gary Hengstler, *Pressing Engagement: Courting Better Relationships Between Judges and Journalists*, **Syracuse Law Review**, Volume 56, No. 3 – 2006, page 4.
[6] **Developing Comprehensive Public Information Programs for Courts**, National Association for Court Management, June, 1996, page 1.
[7] Carol Ivy, *When a Reporter Calls, Don't Hang Up*, **California Courts Review**, Summer 2006, page 23.
[8] **Media Guide**, National Association for Court Management, July 1994, page 1.
[9] See Note 7 **supra**, page 23.

respect given to the judiciary, and this erosion of confidence results in loss of esteem toward judges and other court professionals.

Importance of Media Relations

> "As we look to the future, the importance of court/community relations is more evident than ever before. Alexander Hamilton wrote in *The Federalist* (1787) that: 'the ordinary administration of criminal and civil justice contributes more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence towards the Government.'"[10]

An improved impression helps relationships with funding authorities, assists efforts for higher salaries, and reduces the loss of skilled managerial and technical personnel to the private sector.[11] Given today's realities, court professionals need to insure that media coverage of their courts is accurate, balanced, and portrays the courts in the most positive light.[12]

> "In America, the forebearers created a constitution that reflects the diverse needs of the public and that is accountable to the citizens of the United States. Like other branches of government, the judiciary must strive to inform, educate, and be responsive to the needs of the public."[13]

Court and Media Relations in North Dakota

This paper reviews the relationship between the media and trial courts in North Dakota. Primarily, it focuses on three perspectives upon which to base best practices and policy recommendations for the North Dakota Court System. The first perspective is that of the court by exploring existing court policies, court rules, codes of conduct, and practices—written and unwritten—regarding media requests for information. The second is how the media views the court policies, court limits on the press, and court responses to inquiries. And the third, is the perspective of other comparable states' models through a review of media guidelines, best

[10] See Note 6 **supra**, page 2.
[11] See Note 8 **supra**, page 1.
[12] **Loc. Cit.**
[13] See Note 6 **supra**, page 2.

practices, court rules, and policies in those states. Specifically, the research will address the following questions:

- Does the North Dakota Court System have written and/or unwritten policies or court rules related to media access to judicial proceedings and court information?
- Do court employees consider the media policies or court rules to be reasonable and workable and do they carry out these policies and rules consistently?
- Do media representatives consider the media policies or court rules to be reasonable and workable and is the media satisfied with the courts' response to access or information requests?
- What media "best practices," media polices, or court rules have been adopted by court systems in states comparable to North Dakota's judicial system?

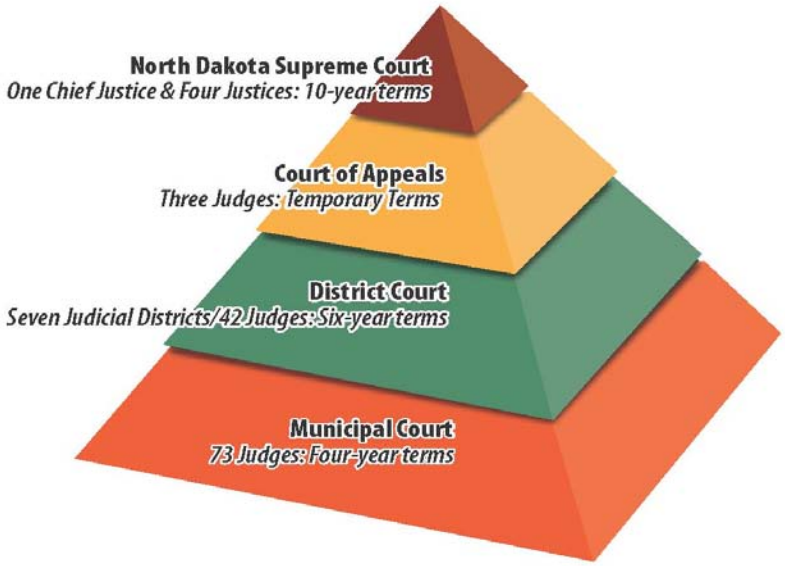
Ultimately, the data will be used to make recommendations regarding changes to existing court policies and practices and the development of guides and/or training programs for employees and the media. To understand the relationship between the courts and media in North Dakota, a review of the structure of both entities is required.

North Dakota State Court Structure

North Dakota has a unified court system with one level of trial courts and one appellate court, the North Dakota Supreme Court. The Chief Justice of the Supreme Court is the administrative head of the court system. A committee structure is in place to make recommendations to the Supreme Court on statewide court rules and policies. Administration at the trial court level is overseen by the trial court administrators and the presiding judges. Trial courts have the authority to adopt local administrative rules and policies.

The state's 44 district court judges are all general jurisdiction judges, handling all case types, including juvenile cases which are historically restricted from public access.[14] The state has eight judicial referees who work for the presiding judge and primarily handle juvenile matters, small claims cases, and child support. The North Dakota Supreme Court has five justices and mandatory jurisdiction over all appeals.[15]

Figure 1 – North Dakota Court Structure

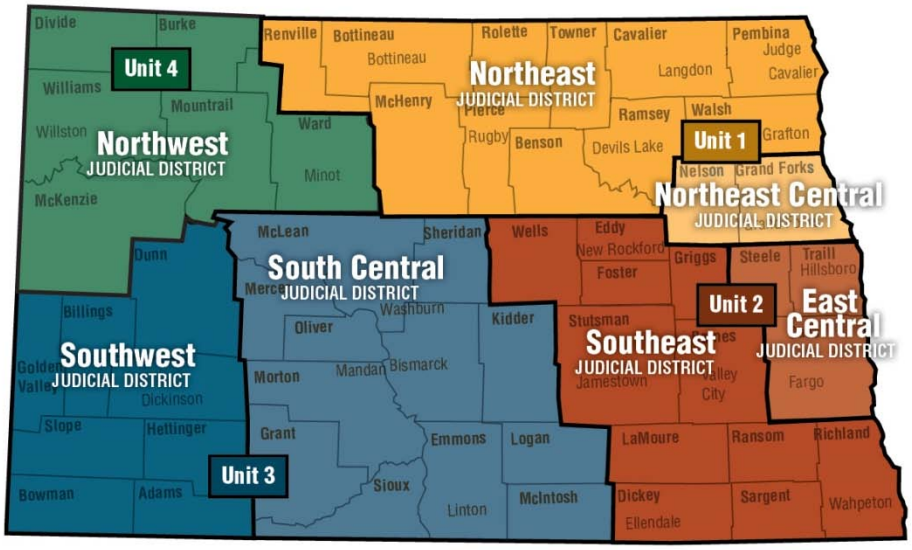


North Dakota has seven judicial districts, combined into four administrative units. Each unit is headed by a trial court administrator, assisted by a trial court manager in three of the four units, and a juvenile court director in each unit. Unit-wide meetings of court personnel are held regularly for training and to update employees on policies and practice. There is a clerk of court in each of the 53 counties, but not all are fulltime. The state employs 12 clerks of court; the counties employ the remaining 41 with the state providing contractual funding for their service to

[14] Two new judgeships were approved in 2009, increasing the number of district judges from 42 to 44.
[15] *North Dakota Courts Annual Report 2008*, www.ndcourts.gov/court/annual.htm. July 22, 2009.

the court. There are 285 judicial branch employees, excluding justices, judges, and referees. Of those, 228 work directly for the trial courts. The remainder work for the North Dakota Supreme Court or the Administrative Office of the Courts. Judges are chambered in 21 cities: Bismarck, Mandan, Washburn, Linton, Dickinson, Williston, Minot, Bottineau, Rugby, Devils Lake, Langdon, Cavalier, Grafton, Grand Forks, New Rockford, Jamestown, Valley City, Ellendale, Wahpeton, Hillsboro, and Fargo. **Figure 2** is a map of the state showing the seven judicial districts organized under the four administrative units.[16]

Figure 2 - Map of North Dakota Judicial Districts and Administrative Units



The North Dakota Court System does not have public information officers or designated media contacts at the trial court level. However, the Clerk of the Supreme Court functions as the media contact for the Supreme Court and the justices. The North Dakota Court System has written policies relating to access to documents, confidential records, confidential information, and

[16] **Loc. Cit.**

cameras in the courtroom. Outside the scope of court records or access to proceedings, there are no uniform guides for court managers or staff on how to handle media requests, such as responding to negative press regarding administrative policy, individual judges, or judicial decisions. Although it has not met in recent years, the Court has an Advisory Commission on Cameras in the Courtroom. A Jury Standards Committee, which meets quarterly, is addressing issues related to juror privacy and juror access to electronic information, and the Joint Procedure Committee meets three times a year to review and recommend changes to court rules.

Media in North Dakota

North Dakota is a large state geographically, but it is sparsely populated. According to data from the U.S. Census website, the state covers 68,976 square miles, with a population density of 9.3 persons per square mile.[17] The population of the state is 641,481; approximately 50% of the population is female. Of the population over 25, 84% has a high school diploma, and 12% live below the poverty line.[18] The largest city is Fargo, on the eastern border. The state's three other large population centers are Bismarck (south central), Grand Forks (northeast), and Minot (north central).

Media outlets in the state are primarily located in the larger cities, with the smaller communities served by weekly newspapers and small local radio stations. North Dakota is served by 10 daily and 79 weekly newspapers.[19] The daily newspapers are located in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, Valley City, Wahpeton, and Williston. Trial court judges are chambered and hold court in each of these locations. All 53 counties in the state are covered by the 79 weekly newspapers, including the remainder of the cities in North

[17] http://quickfacts.census.gov/qfd/states/38000.html, July 24, 2009.
[18] **Loc. Cit.**
[19] www.ndnewspapers.com, July 23, 2009.

Dakota in which judges are chambered. There are 20 television stations in North Dakota, eight of which broadcast regular local news programming.[20] The stations with local news teams are located in Bismarck, Minot, Fargo, and Grand Forks, with news reporters stationed in some of the smaller cities. There are 89 commercial AM and FM radio stations in North Dakota.[21] Almost all of the stations broadcast some local news, but they do not all have designated news reporters. The public broadcast station, Prairie Public Broadcasting, is located in Fargo and is retransmitted to stations across the state.

[20] www.ndba.org, July 23, 2009.
[21] **Loc. Cit.**

II. Literature Review

Freedom of the Press and Fair Trial

The concepts of a free press and a fair trial appear to be in direct conflict in a modern age of instantaneous and continuous news cycles leading to an abundance of pre-trial publicity. The conflict centers around the equitable observance of both the media's First Amendment right to gather and publish news relating to the judicial process and the accused's Sixth Amendment right to a fair trial by an impartial jury. Lewis S. Powell wrote in his article *The Right to a Fair Trial*:

> "The concept and importance of [a] free press are widely recognized. There is far less understanding of fair trial. This is unfortunate, as nothing is more important. It is essential to the survival of our system of government and the individual freedom that has flourished under it that we be ever vigilant to preserve the historic safeguards of fairness when a citizen's life or liberty is placed in jeopardy."[22]

Characterizing the inevitable conflict between these two constitutional guarantees as "incapable of satisfactory solution," one court has concluded:

> "Media of publicity have the right to report what happens in open court. An accused has a right to a trial by an impartial jury on evidence which is legally admissible. The public has the right to demand and expect fair trials designed to end in just judgment. These rights must be accommodated in the best possible manner."[23]

The First Amendment of the U.S. Constitution provides in part that "congress shall make no law abridging the freedom of speech or of the press." This amendment is a restriction on government, leaving the freedom to the people. James Madison called the rights in the First Amendment the most important of all and Thomas Jefferson categorized these rights as natural rights above all other rights—protecting an individual against the government. [24] However, there must be some restraint on the press to prevent publicity which is prejudicial to an accused person's right to a fair trial.

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[22] Glenn R. Winters, **Selected Readings Fair Trial—Free Press**, Chicago: American Judicature Society, 1971, page 1.
[23] *Mares v. United States*, 383 F. 2d 805, 808 (10th Cir. 1967).
[24] See Note 21 **supra**, page 14.

While freedom of the press is clearly expressed in the U.S. Constitution, a fair trial concept is not. The concept is derived from common law and language in the Fifth and Sixth Amendments.[25] The Sixth Amendment provides in part: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury." In contrast to the First Amendment's restraint on government, the right to a speedy and public trial is given to an individual.

Powell addressed this apparent conflict between a free press and fair trial by stating that while the essence of the First Amendment is to permit unlimited expression of views about matters of public and political concern, there are areas of privacy in which respect for the individual and his rights precludes the satisfaction of public curiosity.[26] "The ultimate public concern is not the satisfaction of curiosity or an abstract 'right to know.' Rather it is the assurance that trials are in fact fair and according to law."[27] To state it simply, the guarantee of a public trial is for the benefit of the accused, not the press.

Restraints on the Press

How do courts ensure the historic safeguards of fair trial, which are often endangered by prejudicial publicity, while protecting the freedoms guaranteed in the First Amendment? In *Estes v. Texas,* 381 U.S. 532, 539 (1965) Justice Clark wrote:

> "While maximum freedom must be allowed the press in carrying on this important function in a democratic society its exercise must necessarily be subject to the maintenance of absolute fairness in the judicial process . . . . Moreover . . . the primary concern of all must be the proper administration of justice . . . . [T]he life or liberty of any individual in this land should not be put in jeopardy because of actions of any news media."[28]

[25] See Note 21 **supra**, page 11.
[26] See Note 21 **supra**, page 10.
[27] **Loc. Cit.**
[28] *Estes v. Texas*, 381, U.S. 532, 539 (1965).

To address the problem of fairness, a number of procedural devices are used in court. Those devices include the following: a change of venue to an area not affected by publicity; examination of prospective jurors in voir dire; isolation of juries in protracted cases; postponement of trial to allow the effect of prejudicial publicity to wear off; gag orders, and the reversal of convictions when necessary to assure justice.[29] An additional safeguard is the admonition every judge gives to the jury at each break in the trial—not to read about or discuss the case. Widespread use of these procedural measures came in the wake of *Sheppard v. Maxwell*, 384 U.S. 333 (1966). In *Sheppard*, the Court reversed the conviction of Dr. Sam Sheppard for the murder of his wife. His case attracted extensive media coverage; after his conviction he served several years in prison before seeking habeas corpus relief in the federal courts. The Supreme Court granted the writ and ordered Sheppard released. It held that Sheppard had been deprived of a fair trial because of the "Roman Holiday" atmosphere surrounding the trial and because the judge failed to minimize the prejudicial impact of massive publicity.[30]

> "In reversing the conviction, the Court gave heightened consideration to Sixth Amendment interests. Noting that prejudicial news comment on pending trials had become prevalent, it warned trial judges that, when faced with a reasonable likelihood that publicity would prevent a fair trial, they should take certain narrowly tailored measures, such as juror sequestration, to diminish the likelihood of prejudice."[31]

Historically, the English government used more direct methods to restrain media. English common law controlled the press by punishment through the use of seditious libel laws. Publishers had the right to print anything, but only at the risk of punishment. Newspaper publisher and lawyer Francis L. Dale wrote, "If I print, I am held accountable to libel, obscenity,

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[29] See Note 21 **supra**, page 6.

[30] Kermit L. Hall, S*heppard v. Maxwell***, The Oxford Companion to the Supreme Court of the United States**, Oxford University Press, 2005. *Encyclopedia.com.* 8 Jul. 2009 <http://www.encyclopedia.com>.

[31] **Loc. Cit.**

contempt and treason."[32] In the United States, denying access to information and orders restricting the dissemination of information once it has been obtained raise the related issues of access and prior restraint. The colonists had experienced prior restraint in England, so a principle purpose of the framers of the U.S. Constitution in guaranteeing freedom of speech and press was to forbid government from censoring material before it was published.[33] Few prior restraints have been imposed on the press throughout U.S. history without being challenged in the appellate courts.

The contempt power as a method of prior restraint was challenged and heard by the U.S. Supreme Court in *Near v. Minnesota*, 283 U.S. 697 (1931). The 5-4 opinion concluded that the practical workings of a Minnesota statute were essentially censorship. The statute provided that once a newspaper or periodical was found to contain "malicious, scandalous, or defamatory matter," further publication was punishable as contempt unless the publisher satisfied a judge that what he or she printed thereafter was true and that it was published with good motives and for justifiable ends.[34] In that opinion, Chief Justice Charles Even Hughes left open the possibility that special circumstances might warrant prior restraint. Those circumstances were defined in *Bridges v. California* (1941). The U.S. Supreme Court held in that case that prior restraint of journalists, specifically pretrial coverage, is unconstitutional, unless there is a "clear and present danger to the administration of justice." The court went on to say that this clear and present danger standard was "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." [35]

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[32] See Note 21 **supra**, page 14.
[33] Albert G. Pickerell, **The Courts and the News Media Sixth Edition**, San Francisco: California Judges Association, 1993, page 69.
[34] See Note 32 **supra**, page 70.
[35] *Bridges v. California*, No 314 U.S. 252, 267 (1941).

The constitutionality of restrictive orders aimed directly at the press came before the Supreme Court again in 1976. In *Nebraska Press Association v. Stuart*, 427, U.S. 539 (1976), the Supreme Court unanimously struck down as unconstitutional a judicial order limiting pre-trial publicity about a sensational mass murder in a small town in Nebraska. The order prohibited the press from publishing a confession, the identities of the victims, a description of the crime or the results of a pathologist's report. The Supreme Court struck down the order saying "that judges 'generally' cannot issue 'gag' orders directly against the media in criminal cases even if they believe such orders would help ensure a fair trial.[36] Referring to prior restraint cases, Chief Justice Burger wrote for the majority:

> "The thread running through all cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights . . . .A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanction after publication 'chills' speech, prior restraint 'freezes' it, at least for the time."[37]

Another method of restraint used by the courts is the control of cameras in the courtroom. Even before the invention of television, the debate over cameras in the courtroom was raging in this country. Efforts by the judiciary and the legal profession to prevent cameras from invading the sanctuary of the courtroom had begun at least 20 years before the American Bar Association issued Canon 35 in 1935 banning courtroom photography.[38] Jurisdictions responded differently to the ban. Some flatly prohibited all photographic coverage, in others, news photographers assigned to cover court proceedings were faced with a patchwork of differing judicial stances.[39] Modern conflict dates back to the 1930s' trial of Bruno Richard Hauptmann, charged with the kidnapping-murder of the Lindbergh baby. This case generated enormous amounts of publicity

[36] See Note 32 **supra**, page 71.
[37] **Loc. Cit.**
[38] Charlotte A. Carter, **Media in the Courts**, National Center for State Courts, 1981, page 2.
[39] **Loc. Cit.**

and lead the American Bar Association to adopt Canon 35, which with later amendments prohibited all photographic and radio/television coverage of courtroom proceedings.[40] Canon 35 stated:

> "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during the sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect therto in the mind of the public and should not be permitted."[41]

Some jurisdictions followed Cannon 35, and some courts did not until 1965 when the U.S. Supreme Court held that cameras in the courtroom violated "due process of law" during the trial of Billie Sol Estes.[42] In *Estes v. Texas*, a 5-4 decision, the U.S. Supreme Court reversed Mr. Estes' state court conviction on the grounds that the trial court, over the defendant's objection, had permitted television coverage of pre-trial and trial proceedings. The majority opinion concluded that television coverage in the courtroom involved "such a probability that prejudice will result that it is deemed inherently lacking in due process."[43]

Colorado was the first state to permit courtroom broadcasting and photography by express judicial rule.[44] By the mid-1970s other states had followed suit, implementing rules which permitted limited photographic coverage of courtroom proceedings. The issue came before the U.S. Supreme Court again in 1981. In *Chandler v. Florida*, 449 U.S. 560, 573 (1981), the court concluded that the *Estes* decision did not hold that broadcasting was prohibited in all cases and all circumstances.

Chief Justice Burger wrote for the majority:

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[40] See Note 32 **supra**, page 83.
[41] Canon 35 of Judicial Ethics of the American Bar Association, adopted September 30, 1937, amended September 15, 1952: Improper Publicizing of Court Proceedings.
[42] See Note 32 **supra**, page 83.
[43] See Note 27 **supra**.
[44] See Note 37 **supra**, page 7.

> "An absolute Constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial and trial events may impair the ability of jurors to decide the issue of guilt or innocence uninfluenced by extraneous matter . . . .The risk of juror prejudice is present in any publication of trial, but the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case—be it printed or broadcast—compromised the ability of the particular jury that heard the case to adjudicate fairly."[45]

While the issues around courtroom photography—the right to a fair trial, the right to privacy, First Amendment rights, and the right to a public trial—still exist, the majority of states have adopted rules or guidelines regulating media coverage on the basis that cameras are no longer a distracting factor and that judges can fashion alternatives that are less restrictive upon newsgathering activities than total exclusion.[46]

Access to Court, Judicial Records and Juror Information

While the courts have sought methods to control the press to ensure the right to a fair trial, the media have been diligent in fighting for the right of access to not only court proceedings, but to court records and related information. Before access to the courts and judicial records was discussed as an issue of constitutional principal, there was a tradition of openness for both civil and criminal proceedings.[47] In *Richmond Newspapers v. Virginia* (1980), the U.S. Supreme Court reviewed this history and wrote:

> "The origins of the proceeding which has become the modern criminal trial in Anglo-American justice can be traced back beyond reliable historical records. We need not here review all details of its development, but a summary of that history is instructive. What is significant for present purposes is that throughout its evolution, the trial has been open to all who care to observe."[48]

The primary beneficiary of the public attendance at trials and public access to judicial records was understood to be the criminal defendant. However, it is now the defendant who frequently

[45] *Chandler v. Florida*, 449 U.S. 560, 573 (1981).
[46] See Note 37 **supra**, pages 17-23.
[47] See Note 32 **supra**, page 60.
[48] *Richmond Newspapers v. Virginia*, 448 U.S. 555, 564 (1980).

argues that public access to information and trials will prevent, rather than promote, a fair trial. In response to a number of highly publicized trials, and reversals by the U.S. Supreme Court in the 1960s, some trial judges responded by closing hearings and denying the press access to information. The use of orders restricting access was a departure from historical norms, but posed no constitutional dilemma. Until *Branszburg v. Hayes* in 1972, the accepted practice was that the government was free to deny information to the press and public so long as the denial was on a nondiscriminatory basis (*Branzburg v. Hayes*, 408 U.S. 665 (1972).[49]

The issue of a right of access guaranteed by the Constitution was posed in 1979 in *Gannett v. DePasquale*, 443 U.S. 368 (1979), with the press arguing that the Sixth Amendment right to a public trial created a public right to open hearings as well as a right for the defendant. The U.S. Supreme Court affirmed the decision of a New York judge barring the press and public from attending a pretrial hearing. Decided on Sixth Amendment grounds, *Gannett* left unanswered the question whether the right of access applied to trials as well as to pretrial hearings.[50] The following year, in *Richmond Newspaper v. Virginia*, 448 U.S. 555 (1980), the Court began to firmly establish a right of access to judicial proceedings.

> "The Court adopted a two-pronged analysis to determine whether a right of access existed. First, the Court looked to the historical evidence to determine whether trials traditionally were open at the time the Constitution was adopted . . . . Second, the Court turned to the question of whether the function of trial was enhanced by openness. The Court found four benefits to open trials: (1) Public trials enhance public confidence in the trial process; (2) public attendance operates as a check on abuses of the judicial system; (3) public knowledge of the process promotes the truth-finding function; and (4) publicity helps achieve a community catharsis following serious crimes."[51]

The North Dakota Supreme Court in *KFGO Radio Inc. v. Rothe*, 298 N.W. 2d 505 (N.D. 1980) stated:

[49] See Note 32 **supra,** page 61.
[50] **Ibid**, page 62.
[51] See Note 32 **supra**, page 63.

> " . . . 'all courts shall be open' stands for the proposition that officers of the courts, along with jurors, witnesses, litigants and the general public have the right of admission to court proceedings . . . . The right of access accorded the public must also be accorded to the media because the media not only constitute a part of the general public but also operate as agents or surrogates for the general public in gathering and disseminating information."[52]

The right of access extends beyond the courtroom and judicial proceedings to include court records. Information contained in court records is of vital public interest. Court records consistently have proven to be a critical source of information for the public. Public access to courts is vital to allow the public to effectively follow court cases and oversee the workings of the judicial system.[53] Courts have consistently noted that access to courts and court records is important for public education, public trust, and the integrity of the court system. This presumptive right of access extends beyond judicial proceedings to court documents as well.

> "Many courts, including this one, have affirmed that right. In *State v. O'Connell*, this Court [North Dakota Supreme Court] carefully considered whether courts must make court records available to the public for inspection. Expressing the importance of a court's need to 'operate a competent tribunal and to safeguard and protect its records,' this court held that 'it is the right of the public to inspect the records of the judicial proceedings after such proceedings are completed and entered in the docket of the court.'"[54]

Following *Richmond Newspaper, Inc. V. Virginia* (1980) many lower courts have held that there is also a First Amendment-based right of access to judicial records in criminal proceedings. In *Globe Newspaper Co. v. Pokaski*, *868 F .2d 497* (1st Cir. 1989) for example, the federal appeals court in Boston found that First Amendment access to criminal proceedings extends to criminal judicial records, specifying that access to judicial records is constitutionally required unless the

[52] *KFGO Radio Inc. v. Rothe*, 298 N.W. 2d, 505 (N.D. 1980).
[53] The Reporters Committee for Freedom of the Press, **Electronic Access to Court Records**, 2007, www.rcfp.org/ecourt/index, July 9, 2009.
[54] Brief of Amicus Curiae the Reporters Committee for Freedom of the Press in Support of Petitioner in *Forum Communication Company v. the Honorable Lawrence E. Jahnke*, 2007.

trial court makes specific, on-the-record findings that sealing is necessary to achieve the compelling interest.[55]

Some court records have historically been restricted, such as juvenile and adoption records, medical records, financial records, and records which if released would compromise the safety of an individual, interfere with protected property interest, or result in an unfair competitive advantage or injury.[56] In light of the growing demand for electronic access to records, courts are now struggling with how to provide electronic access to records that contain restricted information. While journalists and media attorneys advocate for the same level of electronic access that the public and press have traditionally had to paper records, there are new considerations of privacy, public trust, and confidence that, from the courts' perspective, must be weighed in considering electronic access. In addition to the general areas of national security, personal privacy, and trade secrets, concerns about electronic access include the potential for identity theft, such as the risk of wide dissemination of such personal identifiers as social security numbers, home addresses, bank account numbers, and birth dates.[57]

In response, courts have adopted rules defining access to records and identifying confidential information. Robert Deyling, Administrative Office of the U.S. Courts' assistant general counsel, said the issue of whether and how to provide electronic access to the public creates a good opportunity to evaluate the access-privacy balance and possibly re-balancing it in limited ways.[58] "Courts pretty much to a fault have said, 'let's not have social security numbers in the record . . . no more financial account numbers. No more personal addresses in some

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[55] See Note 52 **supra**.
[56] **Concept Paper on Access to Court Records**, Conference of State Court Administrators, August 2000.
[57] Jerrianne Hayslett, **National Conference on Courts and Media: the Gathering Storm**, Washington, D.C.: The Donald W. Reynolds Center for Courts and the Media, 2005, page 28.
[58] **Ibid**, page 30.

situations. No more birth dates, especially birthdates of children. These are the areas that are the focus in many rules."[59] Journalists advocate that the same values and legal principles that sustained the courts' prior access jurisprudence—permitting first-hand observation of the legal system at work, cultivating trust in the administration of justice, and acknowledging the news media's role in conveying information to the public—are all relevant when the question of access is transplanted into the digital world.[60]

> "By preserving the presumption of openness as judicial records move to electronic form, the courts will maintain this vital link with the public and bolster public confidence in the administration of justice. As Chief Warren Burger noted in *Richmond Newspapers v. Virginia* . . . 'people in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.'"[61]

Journalists in North Dakota are no exception. The North Dakota Newspaper Association filed a petition in early 2009 supporting changes to a court rule that required the redaction, in criminal cases, of the defendants' street address, and except for initials, the name of a minor.[62] The rule (3.4 of the Rules of Court) dealt with privacy protection for filings made with the court. Changes effective March 2009 were based on privacy protection changes made in several federal rules, which North Dakota court rules generally track. The rule prohibited the use of the following in documents filed or released by the court: social security numbers, except for the last four digits; taxpayer identification or financial account numbers; birth dates, except for the year of birth; and the name of a minor, except for the initials.

> " . . . the court has been showered with complaints from newspapers, investigators, genealogist, land agents, attorneys and others who, in the words of one JPC (Joint Procedure Committee) member ' . . . view the courthouse as valuable sources of

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[59] **Loc. Cit.**
[60] See Note 52, **supra**.
[61] **Loc. Cit.**
[62] Jack McDonald, *Rules to live by…Not!*, **Publishers Quarterly**, Vol. XVI, No. 2, Second Quarter 2009, North Dakota Newspaper Association.

> information that is supposed to be open to the general taxpaying public.' That's not a bad view."[63]

The rules were amended in December 2009 in response to some of the media and other concerns about redacted information in criminal cases and the name of a minor when the minor is a party and there is no statute, regulation, or rule that mandates non-disclosure..

The issue of privacy has also been raised in the arena of juror information. Until about 30 years ago, jurors' identities were always known. The function of public scrutiny was for members of the community to be able to spot any one on the jury who might have a conflict with the ability to serve impartially on the given trial.[64] That changed in 1977 with the trial of New York drug kingpin Leroy Barnes. He was deemed so dangerous that the jurors' identities were concealed for their protection.[65] From there sprang anonymous jury trials with the courts concluding that the only way to achieve a fair trial was to hide the jurors' identities. This represented a departure for the media because the jury had always been included in press scrutiny of all aspects and parties of the case. In *Press-Enterprise v. Superior Court of California* (1984) the Supreme Court held:

> "The historical evidence reveals that the process of selection of jurors has presumptively been a public process with the exceptions only for good cause shown. The presumptive openness of the jury selection process in England carried over into proceedings in colonial America, and public jury selection was the common practice in America when the Constitution was adopted."[66]

As the practice of impaneling anonymous juries has grown, so have the innovative measures judges have taken to keep the names secret. Among the measures are extensive use of lengthy and detailed questionnaires, mailing questionnaires in advance, conducting voir dire in chambers,

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[63] **Loc. Cit.**
[64] See Note 56 **supra**, page 21.
[65] **Ibid**, page 22.
[66] *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984).

ordering journalists not to publish names they heard in open court during voir dire, having such a large jury venire that there's no space in the courtroom for reporters, keeping jurors' names sealed for several days after a trial, ordering jurors not to talk to the media post-trial, and threatening reporters with contempt if they attempt to contact jurors—a measure that was struck down by an appellate court as an unconstitutional prior restraint.[67] Addressing the issue in a concurring opinion in *Press-Enterprise Co. v. Superior Court of California*, Justice Blackmun wrote:

> "The Court does not decide nor does this case require it to address, the asserted right to privacy of the prospective jurors . . . . Certainly a juror has a valid interest in not being required to disclose to all the world highly personal or embarrassing information simply because he is called to do his public duty. We need not decide, however, whether a juror, called upon to answer questions posed to him in court during voir dire, has a legitimate expectation, rising to the status of a privacy right."[68]

During a high profile murder case in North Dakota in 2008, the district judge issued an order sealing juror questionnaires and any other information that would help identify the full name of the jurors. Forum Communications Company petitioned the North Dakota Supreme Court for a supervisory writ directing the court to vacate the judge's order arguing that the law presumes court records, including the jurors' names and the completed juror questionnaires, are public.[69] In issuing the supervisory writ and reversing the judge's order, the North Dakota Supreme Court said:

> "Courts have recognized that the general public and the media have a qualified First Amendment right of post-verdict access to jurors' names, which may be limited by articulated findings to protect juror privacy or safety . . . . The district court's decision did not articulate any specific findings to support closure to protect juror privacy or safety . . . Any closure must be no broader than necessary to protect the articulated interest."[70]

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[67] See Note 56 **supra**, page 23.
[68] See Note 65 **supra**.
[69] *Forum Communication v. The Honorable John T. Paulson*, 2008, N.D. 140.
[70] **Loc. Cit.**

While the general rule in case law is that jurors do have a qualified right to privacy, that right, absent compelling circumstances, yields to the Sixth Amendment right of criminal defendants to a fair and impartial jury and the First Amendment right of the public and press to open court proceedings.[71] Courts collect a great deal of personal information about the citizens who report for jury service. Studies show that prospective jurors do not object to giving court staff a telephone number to contact them in the event of a trial cancellation or postponement and they recognize the need for the judge and litigants to screen prospective jurors to ensure a fair and impartial jury. They do, however, object to the requirement to divulge personal information that does not appear relevant to these legitimate purposes or that might be used for illegitimate purposes.[72] To address this concern, several states restrict public access to administrative information. In New York, for example, juror qualification questionnaires are exempt from public disclosure under the state's Freedom of Information Law, while other jurisdictions have implemented court rules that require summonses to be designed in such a way that qualification and administrative information is segregated from information that is provided to the litigants during voir dire.[73]

> "In reality, neither litigants nor the media are so naïve as to think that qualification or administrative information about prospective juries is particularly helpful on its face to reveal juror bias. Rather, that information is sought as a means to inquire further into a juror's personal information . . . the ability to conduct criminal background checks and independent investigations of prospective jurors is why lawyers and media press so hard for continued access to juror qualification and administrative information."[74]

Tony Mauro, journalists for the *Legal Times* in Washington, D.C., said despite growing efforts to withhold juror information, the media aren't going to go away. He said the measures to restrict

[71] Paula Hannaford, **Making the Case for Juror Privacy: A New Framework for Court Policies and Procedures**, 2001, page 5.
[72] **Ibid**, page 4.
[73] **Ibid,** page 8.
[74] **Ibid**, page 12.

the naming of jurors seemed to be premised on the idea that if jurors are kept anonymous that the media is going to give up, but given the nature of the media, especially today, that is not likely the case.[75]

Standards and Codes for Court and Media Relations

It is obvious from a review of history and case law, that efforts by the courts to balance the rights of privacy and fair trial with freedom of the press have not always been successful. The legislative approach has not gained ground as a viable alternative. Aside from the question of the constitutionality of such legislation, it is obviously a difficult task to devise laws which will meet the exigencies of every situation and will fairly regulate the various interests involved. The code solution has been a more popular avenue. It gained impedus from the *Warren Commission* [a review of the Secret Service operation after the assassination of President Kennedy] recommendation that press, bar, and law enforcement officials cooperate in establishing ethical standards for the collection and presentation of news regarding criminal proceedings.[76] The obvious difficulty with codes is that they are voluntary and cannot be consistently enforced.

Although codes gained ground following the 1964 Warren report, efforts in the United States to control media surrounding court trials through ethical standards began in the early 1900s. The final report of the Committee on the Code of Professional Ethics presented to the members of the American Bar Association in May 1908 included the following canon:

> "Newspaper publication by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally, they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte*

[75] See Note 56 **supra**, page 26.
[76] See Note 21 **supra**, page 94.

> reference to the facts should not go beyond quotation from the records and papers on file in the Court, but even in extreme cases it is better to avoid any *ex parte* statement."[77]

In 1923, the American Society of Newspaper Editors adopted a Code of Ethics or Canons of Journalism. It included the Canon of Freedom of the Press, which stated that freedom of the press is an unquestionable right to discuss whatever is not forbidden by law and is to be guarded as a vital right of mankind.[78] Under the Canon of Fair Play, the code stated, "a newspaper should not involve private rights or feelings without sure warrant of public right as distinguished from public curiosity."[79] From this beginning, the current Code of Ethics for the Society of Professional Journalists (SPJ) was developed. The preamble of that code reads as follows:

> "Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice."[80]

The SPJ code states that the primary mission of journalists is to serve the truth. This code suggests that the public's right to know of events of public importance and interest is the overriding mission of the mass media and that freedom of the press is an inalienable right of people in a society.[81]

The courts are not exempt from these voluntary codes. The ABA Code of Judicial Conduct places restrictions on judicial speech. Rule 2.10 of the Model Code of Judicial Conduct adopted in 2007 addresses judicial statements on pending and impending cases.

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[77] *Final Report of the Committee on Code of Professional Ethics,* American Bar Association, 1908.
[78] *Code of Ethics or Canons of Journalism, 1923*, Center for the Study of Ethics in the Profession at IIT, www.ethics.iit.edu, July 6, 2009.
[79] **Loc. Cit.**
[80] www.spj.org/ethicscode.asp, July 21, 2009.
[81] See Note 8 **supra**.

> "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court . . . a judge shall require court staff, court officials and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making . . . a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity . . . a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter."[82]

In addition to adopting codes of conduct, a number of special press-bar committees were formed by various organizations and reports were issued with recommendations relating to a free press and fair trial. The ABA's Report of the Special Committee on Cooperation Between Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceeding in 1937 made 16 specific recommendations. Among the general recommendations was that local bar associations appoint continuing committees on press relations to function with corresponding committees representing the press."[83] The report also recommended that the Court use its power to punish for contempt to protect the fairness of trial, but at the same time use it sympathetically to protect that portion of the press which spurns the sensational, scandalous, and inflammatory treatment of trial proceedings.[84]

In 1965, the American Society of Newspaper Editors Press-Bar Committee found almost totally lacking evidence that press coverage of criminal proceedings injures the chance of a fair trial for defendants. The Committee took issue with the *Warren Report* criticism of the press. "The press has no wish to conduct 'trial by newspaper.' By the same token, it has no desire for

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[82] *ABA Model Code of Judicial Conduct 2007*, American Bar Association, www.abanet.org/judicialethics/ABA_MCJC_approved.pdf, July 22, 2009.
[83] *Report of the Special Committee on Cooperation Between Press, Radio, and Bar, as to Publicity Interfering with Fair Trial of Judicial and Quasi Judicial Proceedings*, Annual Meeting, Chicago, American Bar Association, 1937.
[84] **Loc. Cit.**

lawyers and police to attempt 'trial by publicity.'"[85] The Committee did support voluntary press codes stating that the functions of the press must not be bound by the same regulations that govern the operation of the law enforcement agencies and the courts. The Committee concluded that the solution to the problem will not be found in codes or law, but in energetic, frequent and continuing conversations among those concerned.[86]

The following year, the ABA Project on Minimum Standards for Criminal Justice issued a tentative draft of Standards Relating to Fair Trial and Free Press. The recommended standards covered the conduct of attorneys, conduct of law enforcement officers, conduct of judicial proceedings, and exercise of the contempt power.[87] The media responded again in 1967. A report of the American Newspaper Publishers Association Special Committee on Free Press and Fair Trial concluded there is no real conflict between the First and Sixth Amendments.

> "A free press requires not only freedom to print without prior restraint, but free access to publish information that should be public; there are grave dangers to the public in censorship at the source; the press is a positive influence in assuring fair trial; isolated cases should not serve as a cause for censorship; court rules restricting release of information by law enforcement officers are an unwarranted judicial invasion of the executive branch of government; there can be no codes which compromise the principles of the Constitution; and neither the press nor the Bar has a right to sit down and bargain away the right of the people to know."[88]

The ABA did ultimately adopt Standards for Criminal Justice Fair Trial and Free Press. Standard 8-1.1., Extrajudicial statements by attorneys, states a lawyer should not make or authorize others to make extrajudicial statements to the media if they know or reasonably should

[85] Report of the Press-Bar Committee, New York: American Society of Newspaper Editors, 1965.
[86] **Loc. Cit.**
[87] *Standards Relating to Fair Trial and Free Press (Draft)*, Recommended by the Advisory Committee on Fair Trial and Free Press, Project on Minimum Standards for Criminal Justice, American Bar Association, 1966.
[88] *Free Press and Fair Trial*, New York: American Newspaper Publishers Association, 1967, page 143.

know that it will have a substantial likelihood of prejudicing a criminal proceeding.[89] This standard is aligned with the ABA's Model Rules of Professional Conduct, particularly Rule 3.6 regarding trial publicity. [90] Standard 8-2.2 concerns the disclosure by court personnel of information to unauthorized persons that is not part of the public records of the court and that may be prejudicial to the right of the prosecution of the defense to a fair trial.[91] Standard 8-3.1 addresses the prohibition of direct restraints on media and Standard 8-3.2 concerns public access to judicial proceedings and related documents and exhibits.[92]

While codes and standards have a recognized place in the ongoing relationship between the media and the courts, perhaps "an exchange of views and complaints on a daily basis, and a conscientious effort to resolve the conflicts, will inevitably lead to the greater enlightenment not only of the press and bar but also the public."[93] Or, as the Florida Supreme Court wrote in 1959,

> "There is little justification for a running fight between the courts and the press on this question of a fair trial and free press. Both are basic and sacred concepts in our system of government. All that is required to preserve both is for the press and the courts to place the emphasis on the Constitution instead of on themselves."[94]

Court Administration and the Media

Trial court administrators play a critical role in media relations and balancing the conflict between the First and Sixth Amendments. The National Association for Court Management (NACM) has developed 10 Core Competencies for court managers, one of which is Court Community Communication. The Core Competency Curriculum Guidelines state:

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[89] **ABA Standards for Criminal Justice Fair Trial and Free Press**, Third Edition, Washington, D.C., American Bar Association, 1992, page 1.
[90] *Model Rules of Professional Conduct*, www.abanet.org/cpr/mrpc/home.html, July 6, 2009.
[91] See Note 88 **supra**, page 15.
[92] **Ibid**, pages 19-21.
[93] See Note 21 **supra**, page 96.
[94] *Brumfield v. State*, 108 So.2d 33, 38 (Fla., 1959).

> "If the courts are to be accessible, open, responsive, affordable, timely, and understandable, courts must learn from and educate the public. To interact effectively with their many publics, court leaders must understand the media and its impact on the public's understanding of and satisfaction with the courts. Understandable courts, skillful community outreach, and informed public information improve court performance and enhance public trust and confidence in the judiciary."[95]

Print and broadcast news are consistently the greatest sources of information about courts and probably the most influential forces in formulating public understanding of and satisfaction with courts. Effective court leaders communicate well with and through the media.[96]

> "Court leaders must understand the news media and have productive relationships with reporters, editors, and news officials. They must respond appropriately to news inquiries, generate constructive news coverage, use the media as an educational tool, and communicate with and without reporters through the print and broadcast media."[97]

Court leaders should also be familiar with the Trial Court Performance Standards, particularly in the area of Public Trust and Confidence. In the 1980s and 90s, the Commission on Trial Court Performance Standards addressed the importance of improving court performance and developing standards in many areas, including the obligation to inform and educate the public under Performance Area 4: Independence and Accountability. Standard 4.4, Public Education, states that the trial court informs the community about its programs:

> "Most members of the public do not have direct contact with the courts. Information about the courts is filtered through sources such as the media, lawyers, litigants, jurors, political officeholders, and employees of other components of the justice system. Public opinion polls indicate that the public knows very little about the courts, and what is known is often at odds with reality. [98]

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[95] *Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do*, National Association for Court Management, page 5, www. nacmnet.org/cccg/index.html **,** July 6, 2009.
[96] **Ibid**, page 32.
[97] **Loc. Cit.**
[98] *Trial Court Performance Standards and Measurement System.* www.ncsconline.org/D_Research/tcps. July 21, 2009.

A system was also developed to measure a court's effectiveness in meeting these standards. The Trial Court Performance Standards and Measurement System defines a philosophy that encourages trial courts to conduct regular self-assessments and improvements, treating them as routine court administrative activities. To this end, the system's measurement component is designed to gather information that the court can use in a variety of ways, including budgeting, case management, implementing court improvement projects, and strategic planning. The initial application of the measures aids the court in identifying areas requiring attention or potentially in need of improvement. The three measures for Standard 4.4 assess how well the trial court informs the community of its programs. Measure 4.4.1 involves a review of court policies, procedures, and practices for responding to media requests. Measure 4.4.2 consists of two interview surveys—one for media representatives and one for court employees—that obtain information about their perspectives on court policies and practices in responding to media inquiries. The court's community involvement is assessed in Measure 4.4.3 through an examination of the existence and extent of both community outreach programs and individual court employee participation in community organizations.[99] Modified versions of Measures 4.4.1 and 4.4.2 are used in this research. The research also includes a review of North Dakota court policies and rules relating to media access to judicial proceedings and court information as recommended in Measure 4.4.3.

During the time the Trial Court Performance Standards were being developed, there was a significant increase in the number of professional court public information officers hired by the courts. In a survey of court public information officers conducted in 1992, 77% of the respondents indicated that their positions were created between 1980 and 1992.[100] Other survey

[99] **Loc. Cit.**
[100] Mary Brittain, **Court Public Information Officers Survey**, December 1992, National Center for State Courts.

results showed that 64% of the respondents represented the entire state judiciary; 43% worked with courts that had developed a formal court public information plan; and 57% said educating the media was a primary role in media relations.[101]

According to NACM's Media Guide, the general goals for court/media relationships are: to educate and inform the public about the role and functioning of the court system; to establish a communications vehicle for informing the public about court-related developments; to ensure fair, complete, and accurate reporting of the courts; to assist reporters in carrying out their responsibilities in informing the public; and to promote media coverage with the least disruptions to court proceedings.[102] The guide also said it is important that each court have a media relations plan which delineates authority and specifies court procedure. Some recommendations for nurturing media relations include the following:

- Make the chief judge or court manager responsible for press relations
- Establish fair press, free trial agreements with the press
- Establish meaningful relationships with the media by promoting public information
- Encourage cooperation from court employees
- Train court employees on media relations and local public records laws
- Develop a media relations plan
- Be sympathetic and aware of press deadlines
- Make sure any restrictions on public information are necessary."[103]

Courts and the media have a symbiotic relationship. They need each other in order to work. In an article for the *Syracuse Law Review*, Gary A. Hengstler, director of the Donald W. Reynolds National Center for the Courts and Media at the National Judicial College, wrote:

> "Both the courts and media exist to serve the public interest, each in their respective ways. Both are checks on the use of power. And both require the public trust and confidence for the system to work. The irony is that the courts and media need each other to perform for each to be successful . . . . There is no freedom of the press unless an

[101] **Loc. Cit.**
[102] See Note 8, **supra**, page 2.
[103] **Loc. Cit.**

> independent judge says so in individual cases . . . . And the independence of the judiciary largely is dependent upon media . . . . Because most people do not personally attend court regularly to check for themselves how the system is working, public trust and confidence is a perception gained through reports in the media."[104]

Judge Alexander Sanders, member of the Donald W. Reynolds National Center for the Courts and Media's National Advisory Council, is quoted as saying:

> "There is an infinite number of variables that determine the quality of democracy . . . . But there are only two on which the survival of the democracy depends, and they are a free press and an independent judiciary. You can't have a democracy without those two things. There never has been one and there never will be one. So it's critically important for those two elements to understand each other."[105]

It is clear that developing good working relationships with the media and keeping the public informed about courts is critical to maintaining public trust and confidence in the courts. Court administrators and other court professionals have the responsibility of working with the media and ensuring that state and local rules, policies, and practices are carried out in their judicial districts. This responsibility, along with the recommendation of the Trial Court Performance Standards to measure court effectiveness in this area, provides the impetus to review the North Dakota Court System's policies, court rules, practices, and procedures to better understand the perspectives of the court and media in North Dakota.

[104] See Note 5, supra, page 29.
[105] **Ibid**, page 27.

III. Methodology

Four sources of information were used for this research. The first was a review of North Dakota court policies and rules related to media access to court information and judicial proceedings. The second was a look at the court's perspective on media relations through a court employee survey and a focus group interview with trial court administrators. The third was a survey of media representatives. The last was a review of policies, rules, and best practices related to media access to courts in states comparable to North Dakota. Court employee and media data were collected through survey questions modified from the Trial Court Performance Standards and Measurement System forms 4.4.2a and 4.4.2b. The focus group for trial court administrators concentrated on local media policies and unwritten practices. Questions for the focus group were modified from the Trial Court Performance Standards and Measurement System Form 4.4.1. Media policies and practices from South Dakota, Kansas, Minnesota, and Iowa were used as comparisons to North Dakota.

Survey Instruments

The survey instrument for the North Dakota court employees was modified from the Trial Court Performance Standards and Measurements System form 4.4.2b.[106] The original form was developed for use as an interview. The format was changed to accommodate the format used in the electronic survey software provided through SurveyMonkey.[107] Some original questions were separated into multiple questions and others were consolidated into questions with multiple parts. The total number of questions was reduced from 14 to 10. Wording was changed in some questions to better reflect the North Dakota Court System. The revised form was pre-tested by

[106] See Note 98, **supra**.
[107] www.surveymonkey.com, November 12, 2009.

four employees in the Administrative Office of the Courts, one administrative assistant, two program administrators, and one project coordinator. No additional changes were recommended.

To determine who would receive the surveys, a list of all state court employees who work in the trial courts was generated by the payroll office of the Administrative Office of the Court on July 14, 2009. Judges and judicial referees were excluded. The four trial court administrators were also excluded as they were to be interviewed separately. The resulting list comprised of 224 state-funded trial court employees. The North Dakota Judicial System contracts for court services with 41 of its 53 counties. The clerks of court from these counties were added to the list for a total of 265. The names were alphabetized and every other name was selected to receive a survey. Surveys were electronically sent to 132 trial court employees. The survey was distributed electronically, since all state court employees and the clerks of court contracted in the counties have access to the Internet from their offices. A cover letter explaining the purpose of the survey and requesting a response within 11 days was sent via email, along with a link to the survey. The cover letter and survey instrument can be found at **Appendices A-B**.

The survey consisted of two parts. Part I asked employees to identify their judicial district and job title and to indicate if they have received an information request from the media in the past year. Employees responding no to the question regarding media requests were directed to exit the survey. Employees indicating they had received a media request continued with Part II. The second part of the survey addressed three areas: the type of information requests received, the court's response to the requests, and any factors that restrict an employee's ability to fulfill a media request. A Likert Scale[108] was used to assess the process of responding to

[108] http://changingminds.org/explanations/research/measurement/likert_scale.htm, November 12, 2009.

media requests, the restrictions placed on an employee's ability to release information, and the quality of their response.

The survey instrument for members of the North Dakota news media was modified from the Trial Court Performance Standards and Measurements System form 4.4.2a.[109] The survey was distributed by mail. The original survey was modified to allow participants to select answers from a menu of options and to add comments. A question regarding the judicial district(s) covered by the respondent was added. The modified survey was tested by Jack McDonald, legal counsel for both the North Dakota Newspaper Association and the North Dakota Broadcasters Association and the media coordinator for expanded media coverage. Upon his recommendation, the questions comparing the court system's response to media requests to those of other governmental organizations were eliminated. Without a baseline of how well other government agencies respond to media requests, the measure offered little value to this study. No further problems were identified. The final survey included 12 questions.

Several methods were used to determine who would receive the media survey. First, trial court administrators were asked to identify members of the media who interact regularly with the courts in their administrative units. Second, a web-based search of archived newspaper and broadcast stories for a one-year period between August 2008 and August 2009 was conducted to identify, by their bylines, individuals who covered court-related news. Third, the membership lists from the North Dakota Newspaper Association and the North Dakota Broadcasters was used to identify daily newspaper editors and broadcast news directors from North Dakota's daily newspapers, news/talk radio stations, the public radio station, and the state's television news stations. These individuals were contacted and asked to identify staff members to participate in the survey. Finally, the editors of the weekly newspaper located in

[109] See Note 98, **supra**.

cities where district court judges are chambered were identified. In addition, surveys were sent to the two Associated Press news bureaus in the state.

Surveys were mailed to 91 individuals. A cover letter accompanying the survey explained the purpose of the survey and requested a response within two weeks. The cover letter and survey instrument can be found at **Appendices C-D**. The survey asked participants to identify the media they represent, the number of times in the past year they have requested court-related information, and the courts they have contacted. Using a Likert Scale,[110] they were asked to respond to questions regarding their satisfaction with the information received, the restrictions placed on the release of information, and the timeliness of receiving the information.

Survey Response Rates

The employee survey response rate was tracked electronically through the response summary function provided by SurveyMonkey. The media surveys were numbered and matched with the media list prior to mailing as a method of tracking responses. Of the 132 court employees identified, 97 responded to the survey for a return rate of 73%. Forty-two respondents, or 43%, indicated that they had received an information request from the media in the past year and continued the survey. Of the 91 surveys distributed to members of the media, 45 were returned for an overall response rate of 49%. Of the 45 surveys returned, four were not complete, with the respondents indicating that they had not made a media request with the court system within the last year. Those four responses were eliminated from the analysis. On the date of the deadline to return the media surveys, the return rate was checked. As the rate of return was lower than anticipated, a reminder was sent by email to individuals who had not responded indicating that survey responses would be accepted for another week. [111]

[110] See Note 108, **supra**.
[111] No respondents or employees were identified by name and all results were aggregated to protect their identity.

Trial Court Administrator Group Interview

The four trial court administrators in North Dakota were invited to participate in a focus group interview to discuss media relations within their judicial districts. Three of the four administrators participated, representing Administrative Units 1, 2, and 3. The trial court administrator from Unit 4, which includes the cities of Minot and Williston, was not able to attend the focus group and provided information on Unit 4 policies at a separate time. The interview questions were based on the Trial Court Performance Standards and Measurement System Form 4.4.1[112] The purpose of the group interview was to gather the trial court administrators' perspectives on media relations and to determine if local written and unwritten policies regarding the courts' response to media inquiries had been adopted and followed as a matter of practice. The questions were pre-tested by staff members at the Administrative Office of the Court. No changes were recommended. A copy of the interview questions can be found at **Appendix E**. The administrators were also asked to submit any local written policies in place in their units regarding media access to judicial proceedings or court information.

Comparison States

A review of media-related practices and court rules developed by states similar in structure to North Dakota was conducted as a means of comparing the North Dakota perspective on courts and media to the perspectives of the selected states. Criteria were developed to identity states to compare with North Dakota. Selection of the states was based on the following: 1) a unified court system; 2) a simplified court structure similar to North Dakota; and 3) a court information officer on staff at either the trial court level or with the administrative office of the courts. The selected states were South Dakota, Kansas, Iowa, and Minnesota.

[112] See Note 98, **supra.**

The initial review consisted of gathering media-related documents from each state. An Internet search of each state's judicial system website was conducted. Documents found included charts, policies, court rules, media guides, and information on media-related committees. As a follow-up to the online research, an email was sent to the chief public information officer in each state requesting additional information or clarification. A copy of the email request can be found at **Appendix F**. Only South Dakota responded to the initial request for additional information. A second email was sent to the PIO in Kansas, Minnesota, and Iowa, which resulted in a response from Kansas.

IV. Findings

The findings of this research are presented in five sections. Section One is a review of existing North Dakota Supreme Court policies and rules related to media access to court information and judicial proceedings. Section Two analyzes the results of the trial court employee survey on court and media relations. Section Three summarizes responses from a group interview with the trial court administrators related to local media policies and practices. Section Four analyzes the results of the media survey on court and media relations. Section Five is a review of the court rules and practices in four comparison states.

Section One: North Dakota Court Rules and Policies

Like many other states in late 1960s and early 1970s, North Dakota established a Fair Trial-Free Press Council in early 1971. This Council adopted recommended guidelines relating to Adult Criminal Proceedings which specified what information should be made public at the time of the arrest and what should not. The public information included the accused's name, age, residence, employment, marital status, the substance of the charge, the identity of the investigating and arresting agency and the length of the investigation, and the circumstances immediately surrounding an arrest. A full copy of the guidelines is located in **Appendix G**. Since that time, the North Dakota Supreme Court has adopted several administrative rules, policies, rules of court and codes of conduct that address media relations, public access to judicial proceedings, public access to court records, and confidential information (see **Appendices H-R**):

- Administrative Rule 5: Powers and Duties of the Clerk of the Supreme Court (Appendix H)
- Administrative Rule 21: Electronic and Photographic Media Coverage of Court Proceedings (Appendix I)
- Administrative Rule 41: Access to Court Records (Appendix J)

- North Dakota Rules of Court Rule 3.4: Privacy Protection for Filings Made with the Court (Appendix K)
- Administrative Rule 40: Access to Audiotapes of Proceedings in District Court (Appendix L)
- Administrative Rule 47: Record Searches (Appendix M)
- Policy 50: Procedures for Accessing Tapes or CDs (Appendix N)
- Policy 402: Juvenile Court Records – Confidential (Appendix O)
- Policy 215: Data Access and Dissemination (Appendix P)
- North Dakota Code of Judicial Conduct: Canon 3 (Appendix Q)
- North Dakota Code of Professional Conduct: Rule 3.6 Trial Publicity (Appendix R)

The following summary highlights information relevant to media coverage of courts or public access to court information found in North Dakota's statewide court rules and administrative policies. Administrative Rule 5 establishes the powers and duties of the clerk of the Supreme Court. It states that the clerk has the authority to serve as liaison with the public, members of the Bar, and the news media on behalf of the Supreme Court. Administrative Rule 21, Electronic and Photographic Media Coverage of Court Proceedings, authorizes expanded media coverage in all courts. However, a judge may deny media coverage if it is determined that media coverage would materially interfere with a party's right to a fair trial or when a witness or party objects and shows good cause why expanded coverage should not be permitted. Coverage of proceedings held in chambers, proceedings closed to the public, conversations between attorneys and clients or witnesses, conversations between attorneys and the bench, and jury selection is prohibited. Close up photography of jurors is also prohibited. The rule limits the number of cameras and media personnel allowed in a proceeding and establishes a procedure for requesting expanded coverage. The rule established the North Dakota Advisory Commission on Cameras in the Courtroom and gave it authority to evaluate the rule and to submit its findings and recommendations to the Supreme Court. The commission may also receive and consider

complaints from any person concerning the rule directed to it by the Supreme Court. This rule was last amended effective April 1, 2006.

Access to court records is governed by Administrative Rule 41, which was first adopted in 1996 and most recently amended in December 2009. The purpose of this rule is to provide a comprehensive framework for public access to court records. The rule specifies when records may be accessed and the methods of access—at a court facility, remote access, requests for bulk distribution of records, or access to compiled information from court records. It specifies which information in a court record is not accessible to the public either under federal law, state law, court rule, case law or court order. Rule 3.4 under the North Dakota Rules of Court addresses privacy protection for filings made with the court and requires the redaction of private information in documents filed with the court. The rule, adopted in 2008 and amended in December 2009, specifies the private information that may be included in an electronic or paper filing with the court. It also lists the exemptions from the redaction requirement and provisions for making a filing under seal.

Administrative Rule 40 covers access to audiotapes of proceedings. The rule establishes procedure for the purchase of audio-taped recordings and specifies reasons a judge may order that all or part of the recording not be available to the public. North Dakota Supreme Court Policy 503 further details the manner in which a request for an audiotape or CD should be made and how fees should be paid. Administrative Rule 47 establishes the method and manner in which clerks of district court respond to requests for searches of record information and the manner in which search information is provided.

Two additional Supreme Court Policies restrict access to court information. Policy 402 establishes uniform procedures for the inspection, duplication, and use of Juvenile Court records.

Juvenile Court records are confidential and not open to inspection or release except as provided by North Dakota law or this policy. The policy addresses general disclosure, disclosure with court order, social service reports, statistical information, and drug and alcohol treatment records. Policy 215 governs judicial, public, criminal justice, law enforcement, and selected private agency access to trial court information stored electronically. It establishes levels of access for user groups, including the public.

The North Dakota Code of Judicial Conduct limits judicial disclosure of case information under Canon 3. Section B, Number 9 states that a judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness. Section B, Number 12 states a judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. Attorney disclosure is addressed under the North Dakota Rules of Professional Conduct, Rule 3.6, Trial Publicity. The rule states that a lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated through the media and will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

When taken as a whole, these rules and policies suggest the North Dakota Court System has thoughtfully addressed the issues related to public access to court records and judicial proceedings and has developed a framework of rules and procedures to maintain the balance between freedom of the press, fair trial, and privacy issues. The rules clearly indicate information that is public and the manner in which it can be accessed. Guidelines are provided for court employees, judicial officers, and attorneys. A structure is clearly in place for the

Judicial System to address emerging issues in this arena as a result of new technologies and trends in information sharing.

Section Two: Trial Court Employee Survey on Court and Media Relations

Response rates for the surveys on court and media relations were high—96 employees (73%) answered the question regarding the judicial district in which they work and their job title. Employees in all seven judicial districts responded, with the least number of responses from the Southwest and Northeast Central Districts. See **Table 1.**

Table 1- Employee Response by Judicial District

	Responses	
	N	%
Southeast	20	21
South Central	19	20
East Central	16	17
Northwest	15	16
Northeast	13	13
Southwest	7	7
Northeast Central	6	6
Total	**96**	**100**

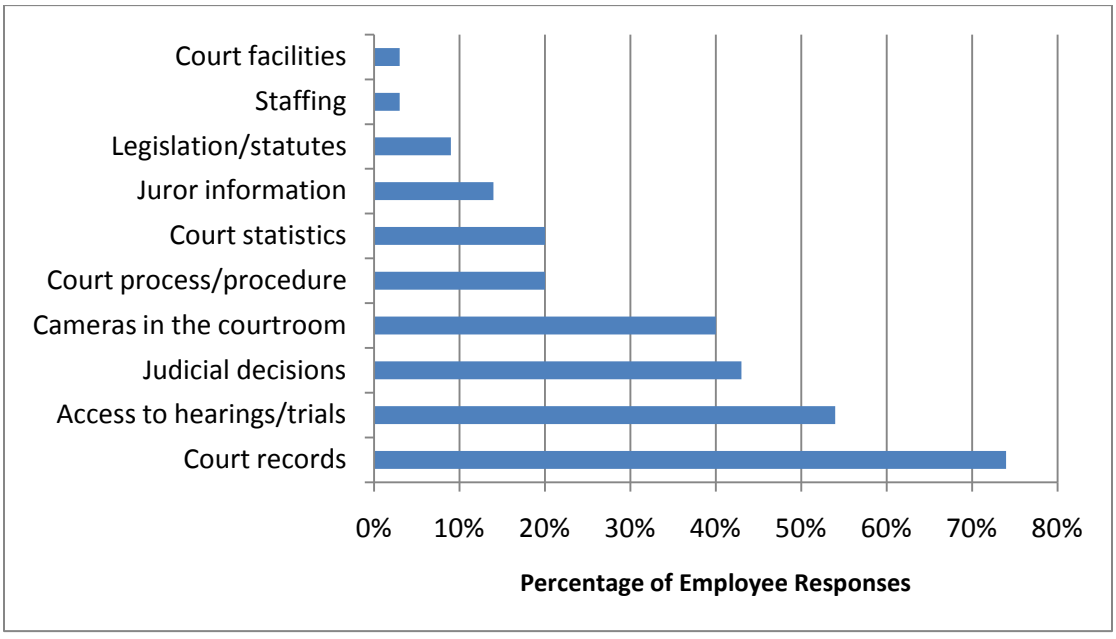
Additionally, 97 (73%) responded to whether they had received a media request in the past year. Of those, 42 or 43% stated they had received a media request. Of the employees receiving a media request, the majority, 32 or 76%, were associated with the clerk of court office (ie. the clerk of court, deputy clerk, or calendar control clerk). See **Table 2.**

Table 2 – Response Rate by Job Title and Media Request Received

	Responses	
	N	%
Clerk/Deputy Clerk/Calendar Clerk	32	76
Court Reporter/Recorder	4	10
Juvenile Director/Juvenile Court Officer	3	7
Secretary	2	5
Law Clerk	1	2
Total	**42**	**100**

Employees who had received a request were asked to indicate the type of information requests they received from the media. There were 35 responses. Most requests were to access court records (74%), followed by access to hearings or trials (54%), judicial decisions (43%), and cameras in the courtroom (40%). Requests for information in the other categories were received by 20% or less of the respondents. See **Figure 3**.

Figure 3 – Type of Media Information Requests Received by Court Employees



When analyzed by job type, most requests of clerks of court were for court records (91%), followed by access to hearings and trials (64%), and cameras in the courtroom requests (46%).

Similar to the types of requests received by the clerk of court, deputy clerks also received requests for court records (88%), cameras in the courtroom (38%) and access to hearings/trials (38%). Requests related to judicial decisions appear to be unique to deputy clerks (44%) and court reporter/recorders (75%).

Employees receiving media requests were asked if they were required to notify a specific person within the court system upon receiving a request. Of the 38 responses, 21 (55%) indicated they were required to notify a specific person. When filtered by judicial district, all employees from the South Central and Southwest Judicial Districts indicated that they were not required to notify anyone when receiving a media request, and all employees in the East Central Judicial District indicated they were required to notify a specific person. The employees in the other districts were divided in their responses.

Table 3 –Percentage of Total Respondents Required to Notify Specified Court Personnel Upon Receipt of Media Request

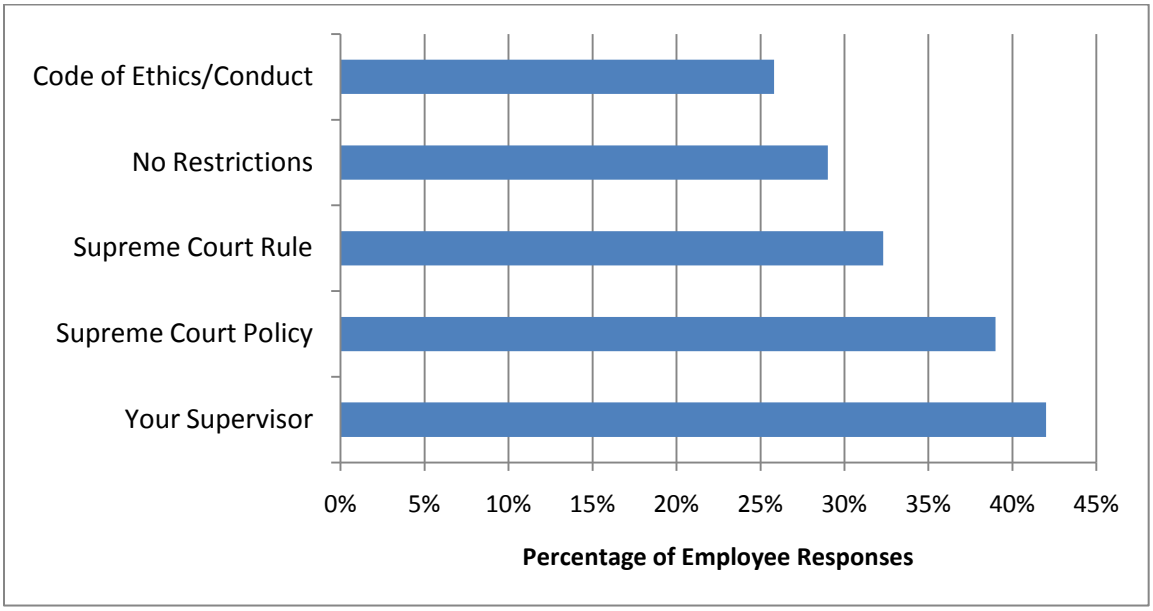
	Responses	
	N	%
East Central	5	100
Northeast	8	75
Southeast	8	63
Northeast Central	2	50
Northwest	9	44
South Central	5	0
Southwest	1	0
Total Statewide	**38**	**55**

Of the 21 employees indicating they were required to notify a specific person when receiving a media request, 20 answered the follow-up question regarding who was notified. Multiple answers were given in some instances, with an explanation that the person notified would depend upon the type of request received. The positions listed as receiving the notifications were judge,

clerk of court, deputy clerk or calendar control clerk, court administrator, juvenile director or supervisor, state's attorney, and supervisor.

Employees were asked to indicate the factors that restrict their ability to respond to a media request for information or to provide an adequate response. Multiple responses were allowed (31 responded). The most frequent response was one's supervisor (42%), followed by Supreme Court policy (39%), or rules (32%). Interestingly, 29% responded that they had no restrictions on their ability to respond to media requests. See **Figure 4**.

Figure 4 – Employee Reported Restrictions on the Release of Information to the Media



Employees were asked to rate the restrictions placed on their ability to respond to media requests from (1) "Very Inappropriate" to (5) "Very Appropriate." A rating average of 3.1 or more was considered a positive response. The overall rating average was 4.2, with 33 employees responding. The majority (58%) found the restrictions "Very Appropriate," while 6% said "Somewhat Appropriate," and 36% remained "Neutral." There were no responses for "Very Inappropriate" or "Somewhat Inappropriate." While the over-all results were still positive, there

were some differences in responses among employees by judicial district with rating averages ranging from 3.7 in the South Central District to 4.6 in the Southeast District. See **Table 4**. It should be noted that there was only one response (Neutral) from the Southwest Judicial District.

Table 4 – Judicial District Rating Average for Appropriateness of Access Restrictions

	Rating Average
South Central	3.7
Northwest	3.8
Northeast Central	4.0
East Central	4.2
Northeast	4.5
Southeast	4.6
Total Overall Rating Average	4.2

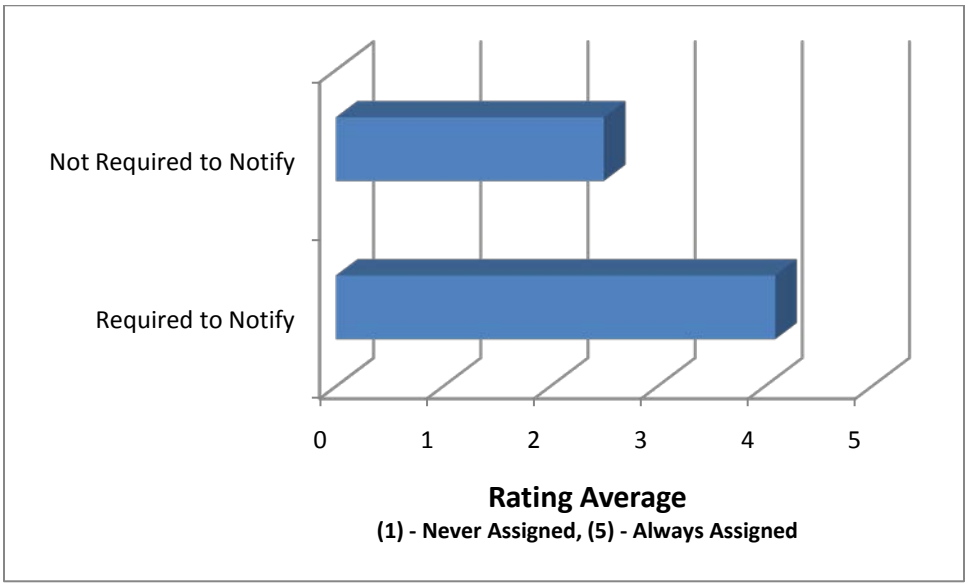
Information on how requests are processed and employee satisfaction with their own responses to media requests was gathered through two questions: 1) Is a specific individual assigned to respond to the media request, and 2) Do they believe their personal response to a media request is adequate. Responses ranged from (1) "Never" to (5) "Always." A rating average of 3.1 or more was considered a positive response. There were 38 responses to the questions

Employees were asked if a specific individual is assigned to ensure that a media request receives a response. The rating average for this question was 3.5. Over one-third (37%) responded "Always," 16% said "Usually," 18% said "Sometimes," 16% said "Rarely," and 13% responded "Never." Again there were a few differences when the data was filtered by judicial district. Two districts responded with a neutral rating—Northeast Central (3.0) and South Central (3.0). There was only one response (Rarely) from the Southwest Judicial District.

When considered by job type, only one group fell below the 3.1 positive rating average for this question. Regarding whether a specific individual is assigned to ensure a response is provided, the four court reporters/recorders split, with two responding "Never" and two

responding “Always,” for a neutral rating average of 3.0. It is interesting to note that employees who are required to notify a specific individual when receiving a request (21 of the 38 responses), also indicated that a specific individual is more likely be assigned to ensure that the request receives a response (4.1 rating average compared to 2.5 for those not required to notify a specific individual). See **Figure 5**.

Figure 5 – Assignment of Media Requests to a Specific Individual by Notification Requirement



Employees were asked if they believed their personal responses to media requests were adequate. The rating average was positive at 4.4. Half of the employees (50%) responded “Always,” 44% said “Usually,” 3% said “Sometimes,” and 3% said “Never.” Additionally, employees were asked how often they personally provided the response to media. The rating average was 3.3. Over one-third of the employees (40%) said “Sometimes,” 34% said “Usually,” 11% said “Always,” 8% said “Rarely,” and 8% responded “Never.” This response was not given a positive or negative designation.

Employees were also asked to indicate how often their attempts to respond to a media request interfered with their ability to carry out their assigned duties. Responses ranged from (1)

"Never" to (5) "Always." The majority (71%) said responding to media requests "Never" or "Rarely" interfered with their assigned duties. There were no notable differences by job type or judicial district.

The final three questions dealt with how often court employees received adequate assistance when responding to a request; how often they had adequate time to respond to requests; and how often they were provided sufficient information from the media to give an appropriate response. Responses ranged from (1) "Never" to (5) "Always." A rating average of 3.1 or higher was considered a positive response. The rating average for these items was 3.9, 3.8 and 3.6, respectively. When looked at by job title, the only negative rating on receiving assistance was from court reporters/recorders. Two of the four court reporters/court recorders responding indicated they never receive adequate assistance from other court personnel to respond to media request, 25% said they usually receive assistance, and 25% said they always receive assistance. The reporter/recorder rating average on this question was 2.5. The one juvenile court officer responding reported only sometimes having sufficient time to respond to media requests and rarely having sufficient information provided by the media. The one juvenile court director responding answered rarely to both questions. Two judicial districts fell below the 3.1 positive rating average in this area. The two employees responding from the Northeast Central Judicial District reported not receiving adequate assistance (rating of 2.5) and not having adequate time to respond to media requests (rating of 3.0). The eight employees responding from the Northeast Judicial District indicated that there was not sufficient information provided from the media (rating of 3.0).

Section Three: Trial Court Administrator Group Interview

The court perspective on court and media relations was further expanded in a focus group interview with trial court administrators. The three court administrators who took part in the interview were asked to respond to a series of questions about written and unwritten media policies and practices in the judicial districts in their unit. Each of the court administrators covers two judicial districts, with the exception of the Unit 4 court administrator, who covers the Northwest Judicial District. The Unit 4 court administrator did not take part in the group interview, but was questioned about local media policy at a later time.

The interview revealed that five of the seven judicial districts have supplemental written policies for electronic and photographic media coverage of judicial proceedings. See **Appendices S-W**. The remaining two, the Northeast and Northwest Judicial Districts, allow judicial discretion in individual cases within the statewide guidelines of Administrative Rule 21. These local policies are determined by the district judges with the assistance of the trial court administrators. The court administrators indicated that the policies are primarily followed uniformly within the districts, with some judicial discretion.

Interview questions focused on media involvement in creating local policy and the courts' efforts to assist the media in their coverage of court news. According to the court administrators, media representatives were not given an opportunity to comment upon or contribute to the local policies or provide formal feedback. In contrast, there is a period for public comment for statewide rules adopted by the North Dakota Supreme Court. As was previously noted, the trial courts do not have public information officers on staff or designated media contacts. Some of the local policies, however, do give information on which office to contact for expanded media coverage, media "pooling" requirements, scheduling of cases, and

the assignment of specific space within the courthouse for use by the media. The court administrators indicated that the unwritten policy is for media inquiries to be referred to the Clerk of Court, the Juvenile Court Director, or the Court Administrator, depending upon the nature of the request. None of the written policies have guidelines for a timely response to media inquiries or define what would be considered an appropriate response from court personnel.

The literature clearly indicates that court professionals have a responsibility to ensure accurate reporting by the media. However, none of the court administrators are monitoring media reports for accuracy within their judicial districts. One administrator said it has been considered, but staff resources are limited. Another said they would not be comfortable monitoring the reports. Furthermore, no court personnel are responsible for informing media representatives when their reports are not accurate or do not abide by court/press guidelines or for contacting them when their reports are accurate and do conform. The consensus of the court administrators was that if someone from the court called to make a correction or explain a process or procedure for one news story, it would be expected for all media reports. The lack of personnel resources to take on such a task was mentioned again as a limitation.

The results of the group interview show that while some supplemental polices are in place within the districts, media representatives were not involved in developing the policies and some of the policies are lacking in information that could be useful for both court employees and the media, such as contact information and guidelines for timely responses. Furthermore, there is a lack of involvement on the part of court administrators in monitoring media reports and developing a working relationship with the media. The issues presented here, along with the recommendations for media relations presented in the core competencies of the National

Association for Court Management, provide a backdrop for considering the media perspective on courts in North Dakota.

Section Four: Media Survey on Court and Media Relations

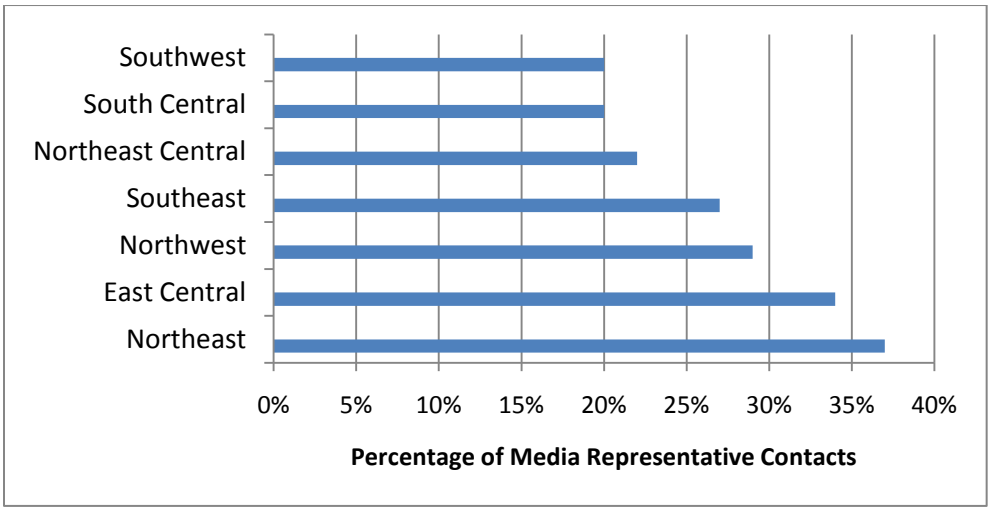
The media's perspective on access to court information and judicial proceedings was gathered through a traditional mail survey of representatives from the various media outlets in North Dakota. The response rate of 49% was adequate for a mail survey.

Table 5- Response Rate by Medium

	Responses	
	N	%
Daily Newspaper	13	32
Television	11	27
Weekly Newspaper	11	27
Radio	6	14
Total	**41**	**100**

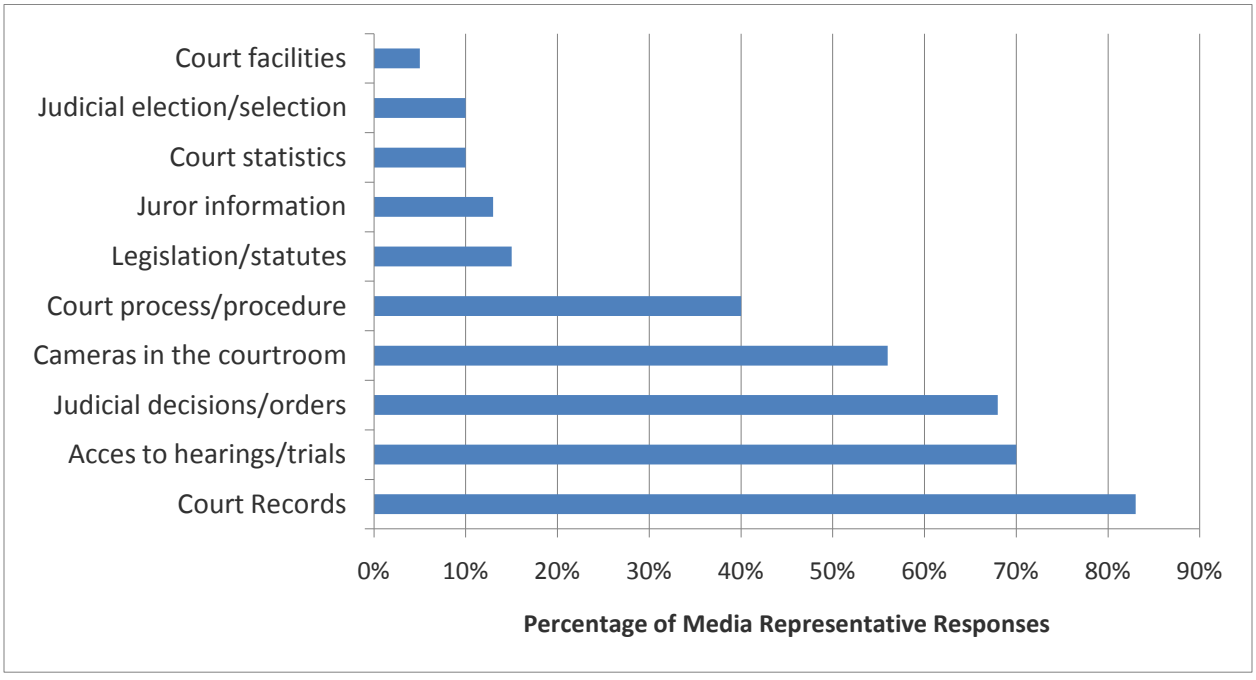
The majority, 64%, indicated that they had attempted to obtain information from a North Dakota District Court more than 20 times in the past year. Media representatives also indicated the judicial districts they have had contact with in the past year. See **Figure 6**.

Figure 6 – Media Representative Contacts With Judicial Districts



When asked if there are specific individuals within the judicial system with whom they speak when making an information request, the response was split with 22 or 54% saying yes. Of those responding yes, 17 (77%) said they contacted the clerk of court or deputy clerk and eight (36%) said their contact was the state's attorney. Other responses were the judge (1), the judge's secretary (1), the defense attorney (2) and the court administrator (1). Multiple responses were given by some respondents. There were 40 responses to the question regarding the type of information requests made with the court. Court records were the most requested type of information, followed by access to hearing or trials, and judicial decisions or orders. See **Figure 7**. When analyzed by medium, electronic media were more concerned about access to hearings and cameras in the courtroom, while print media requested more court records and information on judicial decisions.

Figure 7 – Type of Information Requests Placed with the Court

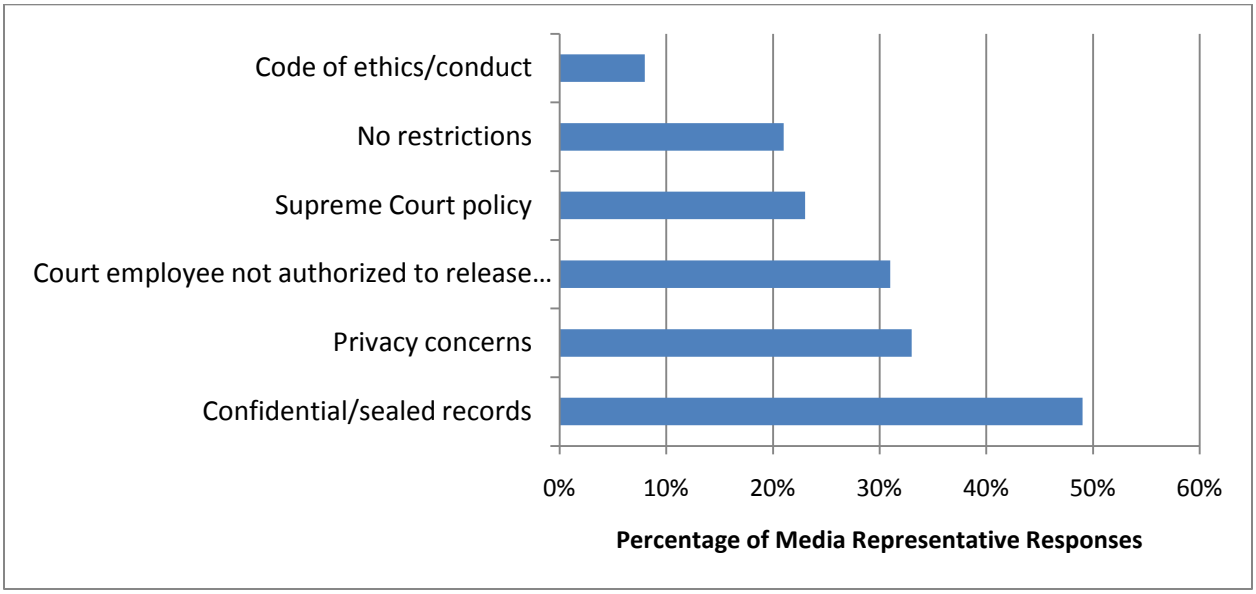


A 5-point Likert scale was used to determine if specific individuals within the court are assigned to ensure that a response is given to the media request and whether that response is satisfactory. The response range for the questions was from (1) "Never" to (5) "Always." A positive rating average was 3.1 or higher. The rating average to the question on specific individuals being assigned to respond to the request was 3.0, a neutral rating. There were 39 responses. Of those responding, 39% said a specific individual was always or usually assigned to respond to their request, 28% said sometimes, and 33% said a specific individual was rarely or never assigned.

Interestingly, two mediums, weekly newspapers and radio, had a positive rating average to this question, 3.7 and 3.5, respectively. There were 10 responses from weekly newspapers and six from radio. Also, respondents indicating that they speak with specific individuals when requesting information had a positive rating average, 3.1, to this question. The rating average on media satisfaction with the courts' response to information requests was 4.0. There were 40 responses to the question.

Media representatives were asked to indicate any restrictions or reasons that have been given by court personnel that limit their ability to obtain information from the court. Multiple responses were allowed. Thirty-nine responded to the question. The most prevalent response was confidential or sealed records (49%), followed by privacy concerns (33%) and that the court employee was not authorized to release information (31%). Eight respondents (21%) indicated that no restrictions were placed on their ability to obtain information. See **Figure 8**.

Figure 8 – Reasons Cited for Restricting Media Access to Court Information



Media representatives were asked to respond to three questions regarding the fairness of restrictions, the timeliness of responses, and court personnel's understanding of procedures for responding to a request. The responses ranged from (1) "Strongly Disagree" to (5) "Strongly Agree." A rating average of 3.1 or greater was considered a positive response. The first statement reads as follows: "The restrictions placed on your information request(s) by the court or by court personnel are fair." The overall rating average was 3.1, with 39 responses. The majority, 44% were neutral, 33% agreed with statement, 13% disagreed, 8% strongly disagreed, and 3% strongly agreed. By medium, only radio representatives had a positive response to this question with a rating average of 3.5. When filtered by judicial districts, media representatives who had contacted the South Central and Southwest districts responded favorably to this statement, with a rating average of 3.5.

The second statement reads as follows: "Court personnel respond to information requests in a timely manner." The overall rating average was 3.8, with 40 responses. The

majority, 53% agreed with the statement, 25% were neutral, 15% strongly agreed, and 8% disagreed.

The final statement reads as follows: "Court personnel understand their own procedures for responding to media requests for information." The overall rating average was 3.73, with 40 responses. The majority, 55% agreed with the statement, 28%were neutral, 13% strongly agreed, 3% disagreed, and 3% strongly disagreed. There was one neutral response to this question when analyzed by the type of information requested. The rating average for media requesting juror information was 3.0, with 60% either responding neutral or strongly disagree. It should be noted that only five respondents said they had requested juror information.

The media as a whole appears primarily concerned with access to court records and judicial proceedings. The data appears to indicate that when media requests are made to specific contacts within the court system, a specific individual is more likely to be assigned to ensure that a response is provided. Overall, the media appears satisfied with the quality and timeliness of the courts' response to information requests. Restrictions on the media's ability to access information or to attend judicial proceedings were generally viewed as fair.

Section Five: Comparison States

A review of rules, policies, and practices related to media access to courts and court information in four other states was conducted to compare the relationships between courts and media in North Dakota to those in other similarly situated states. States similar in court structure were selected for comparison. Those states were South Dakota, Kansas, Iowa, and Minnesota. The review considered not only the rules and policies in place in these states, but also the use of

public information officers, training, media guides, and other tools or programs designed to foster better relationships between media and the courts.

South Dakota

The first state reviewed was South Dakota. Similar to North Dakota, South Dakota has a lengthy court records rule, Unified Judicial System Court Records Rule SDCL ch. 15-15A. This rule outlines who has access to court records, which records are only publicly available at a court facility and which records are excluded from public access. It addresses bulk distribution of records, access to compiled information, and the method to prohibit public access to information in a court record. The South Dakota Supreme Court adopted a rule in 2008, SDCL 16-13-31.1, which seals jury records from public access. Unlike North Dakota, South Dakota does not allow expanded media coverage in the trial courts. However, Rule 03-11, effective July 1, 2003, does allow expanded media coverage of South Dakota Supreme Court proceedings. Media guidelines for this rule are the South Dakota Codified Laws 15-24-6. A legislative statute that prohibited the taking of photographs, and radio or television broadcasting of judicial proceedings from a trial court courtroom was repealed effective July 1, 2008. The Supreme Court has since authorized the creation of the Supreme Court Committee Concerning Media to study the issue of allowing expanded media coverage in the trial courts. South Dakota has a Director of Court Information and Publications. The position is housed within the Administrative Office of the Court. In follow-up questions, the director indicated that media inquiries are generally referred to the State Court Administrator's Office. There is no media guide for the court system, but South Dakota is considering developing a guide. No training on media relations has been provided for court personnel and the court system does not sponsor a training program for members of the media.

Some meetings with members of the media have been held in South Dakota to open the lines of communication, but no action has been taken.[113]

Kansas

In Kansas, the statewide media rule is Supreme Court Rule 1001, permitting cameras and audio recordings of court proceedings. The rule requires the designation of a media coordinator at the district court level whose function is to work with the trial judge, the administrative judge, and the media in implementing the rule. Several of the larger counties in Kansas have local rules supplementing this statewide rule. Access to court records in Kansas is covered under the Kansas Open Records Act, which has been construed to provide that court records (unless specifically exempted such as adoption or juvenile younger than 10-years-old) are open for inspection. A guide to the judicial branch open records request is available on the Kansas Judicial Branch website. Records requests are directed to either the Clerk of Court or the court's Freedom of Information Officer. Kansas does not have a court rule or statute related to juror privacy, but requires the redaction of personal identifiers in pleadings.

The position of Education-Information Officer for the Kansas Judicial System is housed within the Administrative Office of the Court. There are no designated media liaisons at the trial court level. However the Education-Information Officer does respond to significant trial court matters or media issues upon the request of the judges, especially in high profile trials.[114] Kansas has a media guide for reporting on criminal cases and provides training on media relations for judges and court employees on an ad hoc basis. Examples of this would be presentations at joint meetings of the Kansas Bar Association and the state's judges, presentations to the state's chief judges at their annual meeting, and sponsoring

[113] Gusso, Jill. "CEDP Research on Court and Media Relations." Message to the author. Sept. 30, 2009. E-mail.
[114] Keefover, Ron. "CEDP Research on Court and Media Relations." Message to the author. Nov. 10, 2009. E-mail.

judges/journalists workshops on a regular basis. Annual training for members of the media is also conducted in cooperation with the Kansas State Bar Association, the Kansas Press Association, the Kansas Association of Broadcasters and the Sunshine Coalition for Open Government.

Iowa

As a general rule, court hearings and trials in Iowa are open to the public unless required by law or court order to be confidential. Public access to court records is consistent with the requirements of Iowa Law under Chapter 22 of the Iowa Code. Most court records are public, but some, such as juvenile cases, civil commitment cases involving substance abuse or mental illness, and pre-sentence investigation reports, are confidential. Expanded media coverage is allowed in Iowa judicial proceedings under Iowa Court Rules Chapter 25. The Rule requires request for expanded coverage to be made to media coordinators, located in each of the state's 13 regions, and for notice to then be filed with the clerk of court. The Iowa Rules of Civil Procedure, Rule 1.422, specifies protected information in filings for civil cases, and requires either omission or redaction of the personal identifiers. According to the Iowa Judicial Branch website, each judicial district has at least one person designated to serve as a media contact for that district. In addition, there is a media contact for the Iowa Judicial Branch. Names and contact information are listed on the website. The Iowa Judicial Branch publishes a Reporter's Guide to Iowa's Court System, available online. The Iowa Courts communications officer did not respond to follow-up questions regarding training of court personnel or the media.

Minnesota

Access to court records in Minnesota is governed by the Minnesota Rules of Public Access to Records of the Judicial Branch. The rule covers access to the records of all courts and

court administrators of the judicial branch in Minnesota. The rule states that such records are presumed to be open to the public, with the exception of those required to remain confidential by law. The procedure for requesting record access is outlined in the rule. Inspection, copying, bulk distribution, and remote access are also addressed. A chart on the accessibility of court records in Minnesota is available online at www.mncourts.gov, along with a Media Resource Center page with quick links for media. Rules for expanded media coverage in Minnesota are found under Rule 4 of the General Rules of Practice. Currently, audio and video coverage of the Minnesota Supreme Court is allowed with proper notice and approval.

Minnesota trial courts were operating under a pilot project approved in 1989 to allow cameras in the trial courts if the media had the permission of the parties and the judge. As of February 2009, following the recommendation of an advisory committee of the Minnesota Supreme Court, cameras will be allowed in trial courtrooms as part of a pilot project that will allow electronic media access to court proceedings with a judge's approval. The project will include a study on how televised proceedings affect victims and witnesses. The order allowing the pilot project does not allow audio or video coverage of jurors, or of witnesses who object. The Minnesota Judicial Branch has a court information office and a communications director. This office functions as the public affairs and media relations division for the judicial branch. The court information office did not respond to follow-up questions regarding media contacts at the trial court level, media guides, or training for court personnel and media.

This review indicates that North Dakota rules regarding access to court information are in-line with the four comparison states. North Dakota appears to have a more liberal approach to expanded media coverage, allowing cameras in district court proceedings, while two of the four comparison states do not currently allow such coverage. A major difference is the use of public

information officers. Each of the four comparison states has a public information officer at the state level that acts as a statewide contact for media and offers guidance and support to administrators at the trial level. Kansas and Iowa both have guides in place for the media that help explain court processes, and Kansas offers training for court personnel and media. The efforts of these states to work with the media fall within the National Association for Court Management's general goals for court/media relationships, particularly the goal of a media relations plan which delineates authority and specifies court procedure for responding to media requests.

Section V. Conclusions and Recommendations

Overall, the North Dakota Court System has a thorough set of rules and policies designed to balance the First Amendment right to access with the right to a fair trial and to privacy concerns for jurors, victims, and witnesses. However, members of the public, the media, and employees are required to look to a number of different rules and policies to fully understand what information is accessible, what is confidential, and who has access to judicial proceedings. A critical rule for the media, Administrative Rule 21—Electronic and Photographic Media Coverage of Court Proceedings, may not be explicit enough to cover emerging technology available through wireless devices. With the exception of Administrative Rule 21, there is little evidence of formal media involvement in establishing rules or policies related to access to court information or judicial proceedings.

The court employee perspective on media is heavily influenced by the Clerk of Court office. Clerks of court and employees in the clerk's office are the court personnel that interact with the media most often, receiving the majority of media requests. The most common requests are those for court records, access to hearing or trials, and cameras in the courtroom. The existing court rules provide guidelines for media access in each of these areas. However, there are differences among the judicial districts in how court personnel respond to media requests. For example, some employees are required to notify supervisors or the sitting judge upon receipt of a request, while others or not. Also, the unwritten practice in some judicial districts is to assign specific individuals to follow-up on requests. Members of the media also reported a discrepancy in how requests were processed.

Most court employees indicated that the rules and policies restricting media access to court information were appropriate. On the other hand, some media perceived that not all of the restrictions on access to information were fair. Court personnel indicated that their responses to

media requests were adequate and did not interfere with their regular duties. The media also indicated that responses by the court were both timely and satisfactory.

Court and media relations are also influenced by administrative policy at the trial court level. Five of the seven judicial districts have local written policies for electronic and photographic media coverage which supplement the statewide rules. These policies are primarily followed uniformly within the districts, with some allowance for judicial discretion. Members of the media were not involved in determining or reviewing the local policies, and with one exception, the policies do not designate a point of contact within the court system for media inquiries. The policies offer no guidelines for timeliness of responses. Court administrators do not monitor media reports for accuracy or to ensure that rules and policies are being followed by the media.

In reviewing the comparison states, North Dakota is either on par or ahead of these states in terms of written rules or policies regarding access to court information or proceedings. The primary difference is that the comparison states identify a court information officer at the state level within the Administrative Office of the Courts. Iowa has designated media contacts at the trial level and, along with Kansas, has a published media guide. Kansas also provides training for judges and court personnel, as well as members of the media.

Recommendation 1 – Establish a Review Process for Media-Related Rules and Policies

The rules and policies related to access to court information should be reviewed on a periodic basis, not only to keep pace with technology, but to ensure that the balance between the public's right to access information and privacy concerns is maintained. Media representatives should be involved in this review process. One suggestion would be to revitalize the Advisory Commission on Cameras in the Courtroom to make recommendations to the Supreme Court.

Recommendation 2 – Develop a Plain-Language Summary of Media-Related Rules and Policies

A simplified summary or chart of the rules related to access to court information and judicial proceedings should be created. This should be disseminated to employees and to the media through a link on the court system website. This document would help employees explain why access to certain information is restricted and serve as an educational tool for media.

Recommendation 3 – Develop a Statewide Media Relations Plan

The trial courts should have a media relations plan which delineates authority and specific court procedures for responding to media requests. The plan should be consistent across the state in addressing how courts respond to requests for court information or access to judicial proceedings. The trial court administrators should reach a consensus on how requests from the media should be processed and produce written guidelines for court personnel. Each judicial district should also establish designated media contacts for their courts. There should be a contact in each location in which judicial officers are chambered. These individuals would be responsible for ensuring that each media request receives a timely and appropriate response. The statewide plan should also include periodic assessments of court and media relations that include members of the media and continue to build on the relationships established by this project.

Recommendation 4 – Establish Written Policies for All Judicial Districts

Written media policies for the Northwest and Northeast Judicial Districts should be established. The local policies should be reviewed periodically, with input from the media. Contact information for designated court personnel should be included in the policies. The policies should outline specific procedures in place within the district such as pooling

requirements, restrictions on live transmissions, decorum of media representatives, and designated media areas within the courthouse.

Recommendation 5 – Develop a Process for Monitoring Media Reports

Monitoring media reports is required as part of the checks and balances to ensure that justice is being served fairly and consistently. It is the job of court professionals to ensure that media coverage of courts is accurate and balanced. A system of monitoring media reports for accuracy and compliance with rules regarding confidentially and privacy should be developed. A method of relaying concerns back to the media should be considered.

Recommendation 6 – Provide Training for Court Personnel and Media

Training on media relations should be incorporated into training for the clerks of court and deputy clerks. This can be provided at annual training conferences or at the Administrative Unit level. The training should focus on the rules and policies related to access to court information and judicial proceedings and any local protocols established by the court administrators. A training program for members of the media should be established in cooperation with the North Dakota Newspapers Association and North Dakota Broadcasters Association. A media guide to the North Dakota Court System should be written and published. This guide should be available electronically through the court system website.

The responsibility for developing and maintaining media relations falls to the court administrators in each unit with statewide assistance and support from the State Court Administrator's office. Written policies at the trial court level clarify statewide rules and policies and give the judges and court staff at the trial level the opportunity to provide more specific guidelines for the media in their districts. Media input into both local and state rules and policies will strengthen relationships and give media an outlet for expressing concerns prior to rules

going into effect. Having designated media contacts in each district would simplify the process of responding to media requests and would allow the court to respond to them in a more accurate, consistent, and timely manner. In addition, designated contacts would help build relationships and understanding between media and the courts. Training for court staff and media is critical. Both need to understand the rules related to media access and the limitations those rules impose. It is also necessary for each group to know how the other's organization functions. This knowledge will help the reporters give the court enough time and information to adequately respond to the request and help court personnel understand the time constraints and other limitations faced by the media. Ultimately, the purpose of the recommendations in this report is to continue to maintain the balance between freedom of the press and a fair trial with the goals of educating and informing the public about the court system, assisting reporters in carrying out their duty to inform the public, and ensuring fair, complete, and accurate reporting of the courts.

Limitations

A number of factors limited this work. The first limitation was the number of employees surveyed. Randomly selecting half of the trial court employees and contracted clerks of court resulted in a small sample size that limited the ability to fully explore the data. This limitation made it difficult to analyze data by judicial district or job type in a meaningful manner. Since the North Dakota Court System is small, a better method would have been to survey all of the trial court employees to increase the sample size. The second limitation was the response rate from the media. While considered adequate for a mail survey, the return rate might have been higher using an electronic survey. This method was considered, but it was difficult to get accurate e-mail addresses for individual reporters. The final limitation was the information provided by the comparison states. While the rule, policy, and staffing information was easy to

locate on judicial branch website, the best practices were not. The follow-up responses were necessary to understand the role of court administration, and the court information officer in particular, within those states.

Future studies of court and media relations in North Dakota should consider these limitations and address more thoroughly areas of dissatisfaction, such as the fairness of restrictions on media, and the inconsistencies among judicial districts in terms of policy and practice in respect to media requests. A future review of court rules and policies should determine if efforts have been made by the court to take into account new technologies used in gathering and distributing news reports and to involve media representatives in discussions on policy or rule changes. The impact of paperless courts and electronic filings should be considered, along with issues related to private information. Finally, a future study should evaluate the impact of any rule or policy changes, training programs, or media guides implemented or developed as a result of this study.

Appendix A

Cover Letter for Court Employee Survey

Good Afternoon,

My name is Lee Ann Barnhardt and I am the Director of Education and Communication for the North Dakota Supreme Court. I am currently enrolled in an Institute for Court Management (ICM) course with the National Center for State Courts. As part of the course, I am working on a research paper regarding **Court and Media Relations** in North Dakota. For the purposes of this paper, I am looking at the interaction between both print and broadcast media and the district courts in the state.

It is important to receive input from you regarding your interaction with the media. In particular I am interested in media requests for court information and media access to judicial proceedings. Below is a link to a short online survey for a randomly selected group of court employees and District Court Clerks under contract. It should take less than 10 minutes to answer the questions. I know not all employees have contact with the media, and finding out who does is part of the research. If you have not, please complete the first few questions of the survey instrument. Those who answer no to the question regarding recent media contact will automatically be exited from the survey.

Survey link:

http://www.surveymonkey.com/s.aspx?sm=NW2LSizCYx2fBgn_2fJ1x_2bug_3d_3d

Thank you in advance for your cooperation in completing this survey. Please respond by Friday, September 4, 2009. If you have any questions regarding the survey, contact me at lbarnhardt@ndcourts.gov or call 328-4251.

Sincerely,

Lee Ann Barnhardt

Director of Education

Appendix B

Survey of North Dakota Court Employees

1. For which judicial district do you work?

- o Northeast
- o Northeast Central
- o East Central
- o Southeast
- o South Central
- o Southwest
- o Northwest

2. What is your job title? (Select the answer that best describes your present position with the court.)

- o Calendar Control Clerk
- o Clerk of Court
- o Court Reporter/Electronic Court Recorder
- o Deputy Clerk
- o Juvenile Court Director
- o Juvenile Court Officer
- o Law Clerk
- o Secretary

3. Have you received an information request from the media in the past year? *

- o Yes
- o No

4. Please indicate the type of information request you have received (check all that apply):

- ☐ Access to hearings/trials
- ☐ Cameras in the courtroom
- ☐ Court budgets
- ☐ Court facilities
- ☐ Court process/procedure
- ☐ Court records
- ☐ Court statistics
- ☐ Judicial decisions
- ☐ Judicial election/selection
- ☐ Juror information
- ☐ Legislation/Statutes
- ☐ Staffing

Other (please specify)

5. Are you required to notify a specific person within the court if you receive an information request from a representative of the media?

- o Yes
- o No

If yes, indicate by position the individual you are to notify.

6. Please respond to the following statements.

	Never	Rarely	Sometimes	Usually	Always
a) When an information request from the media is received, a specific individual is assigned to ensure that the request receives a response.					
b) When an information request from the media is received you personally provide the response to the request.					
c) When you provide a response to a media request, you feel the response to the request is adequate.					

7. Indicate the factors that restrict your ability to respond to a media request for information or to provide an adequate response (check all that apply).

- o Supreme Court Rule
- o Supreme Court Policy
- o Code of Ethics/Conduct
- o Your supervisor
- o No restrictions

Other (please specify)

8. Please respond to the following question:

	Very Inappropriate	Somewhat Inappropriate	Neutral	Appropriate	Very Appropriate
How would you rate the restrictions placed on your attempts to respond to an information request by the media?					

9. Please respond to the following:

	Never	Rarely	Sometimes	Usually	Always
a) Indicate how often your attempts to provide a response to an information request from the media interfered with you carrying out your assigned job responsibilities.					

b) Indicate how often you are given adequate assistance from other court personnel when needed to provide a response to a media information request.

c) Indicate how often you are given adequate time to respond to a media information request.

d) Indicate how often you were given sufficient information by the media representative to allow you to generate a response to that individual's information request.

10. Thank you for completing the survey. Please add any additional comments regarding court and media relations in the space below:

Appendix C

Cover Letter for Media Survey

August 17, 2009

Dear

My name is Lee Ann Barnhardt and I am the Director of Education and Communication for the North Dakota Supreme Court. I am currently enrolled in an Institute for Court Management (ICM) course with the National Center for State Courts. As part of the course, I am working on a research paper regarding court and media relations in North Dakota. For the purposes of this paper, I am looking at the interaction between both print and broadcast media and the district or trial courts in the state.

It is important to receive input from you regarding your interaction with court personnel. In particular I am interested in media requests for court information and media access to judicial proceedings. Enclosed with this letter is a survey for members of the media who have covered district courts or had contact with district courts during the past year.

Thank you in advance for your cooperation in completing this survey. Please return the completed survey to me by August 31, 2009, in the self-addressed, stamped envelope. If you have any questions regarding the survey, contact me at lbarnhardt@ndcourts.gov.

Sincerely,

Lee Ann Barnhardt

Director of Education and Communications

Appendix D

Survey of North Dakota Media

1. What media source do you represent?

☐ Daily Newspaper
☐ Newswire
☐ Radio
☐ Television
☐ Weekly Newspaper
Other (please specify)

2. Please indicate the number of times you have attempted to obtain information from a North Dakota District Court in the past year.

☐ 0-5
☐ 6-10
☐ 11-15
☐ 16-20

3. Check the Judicial District of the court or courts you have contacted in the past year (check all that apply).

☐ Northeast(Devils Lake, Grafton, Rugby, Bottineau)
☐ Northeast Central (Grand Forks)
☐ East Central (Fargo, Hillsboro, Wahpeton)
☐ Southeast (Jamestown, Valley City)
☐ South Central (Bismarck, Mandan, Washburn)
☐ Southwest (Dickinson)
☐ Northwest (Minot Williston)

4. Are there specific individuals within the judicial system you speak with when you have an information request regarding the court?

☐ Yes
☐ No

5. If the answer to Question 4 is "yes", list the name(s) and/or positions of the individuals you contact.

6. Please respond to the following question.

	Never	Rarely	Sometimes	Usually	Always
When you have placed information requests with the court, has a specific individual been assigned to ensure that your request receives					

a response?

Comments

7. Please respond to the following question.

	Never	Rarely	Sometimes	Usually	Always
When you have placed information requests with the court, how often is the information you receive satisfactory, given the nature of your request?					

Comments

8. Please indicate the type of information requests you have made with the court (check all that apply).

- ☐ Access to hearings/trials
- ☐ Cameras in the courtroom
- ☐ Court budgets
- ☐ Court facilities
- ☐ Court process/procedure
- ☐ Court records
- ☐ Court statistics
- ☐ Judicial decisions/orders
- ☐ Judicial election/selection
- ☐ Juror information
- ☐ Legislation/statutes
- ☐ Staffing

Other (please specify)

9. Please indicate any restrictions or reasons that have been given by court personnel that have limited your ability to obtain information from the court.

- ☐ Supreme Court Rule or Policy
- ☐ Code of Ethics/Conduct
- ☐ Confidential/Sealed Records
- ☐ Privacy concerns
- ☐ Court employee not authorized to release information
- ☐ No restrictions

Please list any other restrictions.

10. Please respond to the following statement.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The restrictions placed on your information request(s) by the court or by court personnel are fair.					

Comments

11. Please respond to the following statement.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Court personnel respond to information requests in a timely manner.					

Comments

12. Please respond to the following statement.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Court personnel understand their own procedures for responding to media requests for information.					

Comments

Appendix E

Letter to Court Information Officers

Good Afternoon,

I am the Director of Education and Communication for the North Dakota Court System. I am also currently participating in the Court Executive Development Program offered through the National Center for State Courts. Part of that program is conducting original research on an issue impacting your court. I am researching Court and Media Relations in North Dakota. Part of that research includes a comparison of North Dakota rules and policies to those of other unified court systems with similar court and administrative structures. The states I have selected are South Dakota, Minnesota, Iowa, and Kansas.

I have spent some time using the internet to research each of your states. As a follow-up to that on-line research, I am seeking your assistance with a few more questions. If you could respond to the following questions (via email is fine) it would help clarify my comparisons.

Questions:

1) List any statewide court rule, statute, or policy regarding media coverage of court proceedings.
2) List any statewide court rule, statute, or policy regarding the release of, or access to, court records or other court-related document (ie. budgets, reports, studies).
3) List any statewide court rule, statute, or policy related to juror privacy or access to juror information.
4) List any local rules or policies (by district) regarding media coverage of court proceedings.
5) Are there designated media liaisons or contacts at the trial court level in your state?
6) Does your state have a reporter's or media guide to the court system?
7) Does your state provide training on media relations for court employees?
8) Does your state sponsor a training program on the court system for members of the media?

I have surveyed court employees and members of the media in North Dakota. I plan to start analyzing data by Oct.5. I will be happy to share the results of my research with each of you.

If you have any questions, please contact me at 701-328-4251. I truly appreciate your assistance with this project.

Thank you,

Lee Ann Barnhardt
Director of Judicial Education and Communications
North Dakota Supreme Court

Appendix F

Trial Court Administrator Interview Questions

This survey is intended for trial court administrators. Trial court administrators should respond in relation to the trial courts within their administrative units. If there is no clear written statewide or local policy, the court administrator should make an effort to respond to each item in terms of what appears to be the standard practice.

1. Do the trial courts in your administrative unit have a policy (written or unwritten) for receiving and responding to information requests from the media?

   ____ Yes ____ No If *yes*, complete items 1a, 1b, and 1c.

   a. List the title/source or other citation(s) of *written* policy:

   b. Describe how policy is determined and promulgated if the source of policy is not exclusively in written form.

   c. Is policy uniform throughout the court or do different judges or department heads establish their own policy for responding to media inquires?

      _ Mostly uniform

      _ Mostly discretionary with judges and department supervisors

      _ mixed (describe: _____)

2. Were media representatives given an opportunity to comment upon or contribute to the policy prior to promulgation? If so, how?

3. Does the policy designate someone to receive media inquiries (i.e., does it designate a specific individual, a specific office, or a specific telephone number)?

4. Does the policy establish guidelines for a *timely* response?

5. Does the policy establish guidelines for what is an *appropriate* response?

6. Does the policy designate one or more court officials to monitor media reports for fitness and accuracy?

7. Does the policy designate one or more court officials as responsible for informing media representatives when their reports are not accurate or do not abide by court/press guidelines or agreements?

8. Does the policy designate a media representative or official to contact when media accounts are accurate or in accordance with court/press guidelines or agreements?

Appendix G

Recommended Guidelines of
The Fair Trial Free Press Council of North Dakota
Relating to Adult Criminal Proceedings

The following information generally SHOULD be made public at, or immediately following, the time of arrest:

(A) The Accused's name, age, residence, employment, marital status and similar background information.

(B) The substance or text of the charge, such as is, or would be contained in a complaint, indictment, or information.

(C) The identity of the investigating and arresting agency and the length of the investigation.

(D) The circumstance immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

The following information generally SHOULD NOT be made public at, or immediately after the time of arrest:

(A) Statements as to the character or reputation of an accused person.

(B) Existence or contents of any confession, admission or statement given by the accused, or his refusal to make a statement.

(C) Performance or results of tests, or the refusal of an accused to take such a test.

(D) Expected content of testimony, or credibility of prospective witnesses.

(E) Possibility of a plea of guilty to the offense charged or to a lesser offense , or other disposition.

(F) Other statements relating to the merits, evidence, argument, opinions or theories of the case.

Appendix H

Administrative Rule 5 - Powers and Duties of the Clerk of the Supreme Court

Under Article VI, Section 3, of the North Dakota Constitution and Chapter 27-03, NDCC, the Supreme Court of North Dakota promulgates the following Administrative Rule relating to the powers, duties, qualifications, and term of office of the Clerk of the Supreme Court:

I. The minimum qualification of the Clerk of the Supreme Court is a Juris Doctor degree and five years of experience in a court or closely related legal setting which would provide a working knowledge of appellate rules, procedures and practices.

II. The Clerk of the Supreme Court is appointed by the Chief Justice with the approval of the justices of the Supreme Court and serves at the pleasure of the Court.

III. The Clerk of the Supreme Court serves as Secretary-Treasurer of the State Board of Law Examiners as provided by Section 27-11-10 NDCC and serves as Secretary of the Disciplinary Board of the Supreme Court.

IV. Under the authority of the justices of the Supreme Court and the supervision of the Chief Justice or Administrative Justice, the Clerk of the Supreme Court has authority to:

A. employ and supervise such deputies, assistants and staff as may be necessary;

B. supervise the calendaring and assignment of cases, court records, statistical reporting and filing, distribution and publication of opinions of the Supreme Court;

C. serve as recording secretary for meetings of the justices;

D. serve as liaison with the public, members of the Bar, and the news media;

E. grant motions or applications for orders which are supported by stipulations signed by counsel for the respective parties consenting to the relief sought;

F. consider and determine motions and petitions seeking:

1. to file or extend the time for filing briefs, records on appeal, transcripts, pleadings and other papers provided for by the North Dakota Rules of Appellate Procedure; and to deny extensions of time for filing briefs in excess of thirty days;

2. to consolidate cases;

3. to file amicus curiae briefs;

4. to file briefs in excess of the prescribed number of pages;

5. to remand record to the trial court for purposes of preparation of the record;

6. to direct correction in record upon agreement of parties and/or court reporter;

7. to substitute parties;

8. to enlarge time for argument;

9. to appeal in forma pauperis;

10. to refer to the appropriate trial court requests for appointment of counsel for an indigent appellant;

11. to stay or recall a mandate;

12. to advance or continue cases for oral argument;

13. to assign a judge when a demand for change of judge is filed;

14. to rule on other purely procedural matters relating to any action, proceeding, or process in the Supreme Court preparatory to hearing or a decision on the merits.

Any person adversely affected by orders issued by the Clerk of the Supreme Court under Section F may request reconsideration, vacation or modification of the order under Rule 27(c),NDRAppP.

The Clerk of the Supreme Court shall perform other services and assume other responsibilities as the Chief Justice or Justices of the Supreme Court may direct.

This Rule is amended effective July 19, 2006.

Appendix I
Administrative Rule 21
Electronic and Photographic Media Coverage of Court Proceedings

Section 1. Authority. This rule is adopted under the authority of Article VI, Section 3 of the North Dakota Constitution.

Section 2. Definitions. As used in this rule:

a. "Good cause," for exclusion under Section 21(4)(b)(2), means expanded media coverage having a substantial effect on the objector which would be qualitatively different from the effect on members of the general public and from coverage by other types of media.

b. "Judge" means the presiding officer in a judicial proceeding.

c. "Judicial proceeding" or "proceeding" includes any civil or criminal trial, hearing, or other matter conducted before a court.

d. "Expanded media coverage" includes broadcasting, televising, electronic recording, or photographing of a judicial proceeding for the purpose of gathering and disseminating information to the public by media personnel.

e. "Media personnel" includes broadcasters, photographers, recorders, and any other bona fide member of the news media who gathers or disseminates information to the public.

Section 3. Media representative. Broadcasters and photographers shall designate a person with whom the court may consult as a representative of them.

Section 4. General. The court may permit expanded media coverage of a judicial proceeding in the courtroom while the judge is present, and in adjacent areas as the court may direct. Expanded media coverage provided for in this rule may be exercised only by media personnel. This rule does not apply to electronic recording of the official record of a judicial proceeding.

a. Coverage allowed. Media personnel may request the court before which a judicial proceeding is pending to authorize coverage of the proceeding or of all proceedings relating to a case. Expanded media coverage may be permitted of all judicial proceedings, except proceedings specifically excluded by statute, this rule, or in the exercise of the judge's discretion.

b. Judge's authority to deny expanded media coverage. The judge may deny expanded media coverage of any proceeding or portion of a proceeding in which the judge determines on the record, or by written findings:

1. Expanded media coverage would materially interfere with a party's right to a fair trial;

2. A witness or party has objected and shown good cause why expanded media coverage should not be permitted;

3. Expanded media coverage would include testimony of an adult victim or witness in a prosecution under Chapter 12.1-20, N.D.C.C., or for charges in which an offense under that chapter is an included offense or an essential element of the charge, unless the victim or witness consents;

4. Expanded media coverage would include testimony of a juvenile victim or witness in a proceeding in which illegal sexual activity is an element of the evidence; or

5. Expanded media coverage would include under cover agents or relocated witnesses.

c. Judge's authority to limit or end media coverage.The judge may limit or end expanded media coverage at any time during a proceeding, if the judge determines on the record, or by written findings:

1. The requirements of this rule or additional guidelines imposed by the judge have been violated; or

2. The substantial rights of an individual participant, or rights to a fair trial will be prejudiced by the expanded media coverage if it is allowed to continue.

d. Coverage prohibited. Proceedings held in chambers, proceedings closed to the public, and jury selection may not be photographed, recorded, or broadcast. Conferences between an attorney and client, witness or aide, between attorneys, or between counsel and the court at the bench may not be recorded or received by sound equipment .Close-up photography of jurors is prohibited.

e. No appeal of expanded media coverage decision. A judge's ruling on expanded media coverage is not appealable.

Section 5. Requests. Expanded media coverage must be requested as provided in this Section:

a. Appellate court proceeding. A media representative must request expanded media coverage from the Supreme Court at least seventy-two hours before the scheduled proceeding. The request must be by regular mail and, if possible, by facsimile, with copies to counsel of record. The Court may determine the coverage of any proceeding.

b. Trial court proceeding. A media representative must request media coverage from the judge of the trial court before which the proceeding is scheduled at least seven days before the proceeding. Notice of the request for coverage must be given to all counsel of record and any pro se parties .A copy of the notice of request must be sent by the fastest reasonable means to all counsel of record, any pro se parties, and the judge. The notice must be in writing and filed with proof of service with the clerk of the appropriate court. If the proceeding is scheduled less than seven days in advance, a request for coverage and notice of request must be given as soon as practicable.

c. Single request for all proceedings. Following the procedures in subsection (b), a media representative may make a single request to cover all proceedings in a case. The judge may not grant the request for all proceedings if a criminal defendant is not represented by counsel.

d. Equipment and technical variance. Upon application of media personnel, the judge may permit the use of equipment or technology not provided for in this rule. An objection to any variance in equipment or technology must be made as provided in Section 6. The judge may rule on a variance without advance application or notice, if all parties and counsel consent.

e. Deadlines may be extended or reduced by court order.

Section 6. Objections to coverage in trial court proceeding. A party to a proceeding objecting to expanded media coverage in a trial court must file a written objection with the court, stating the grounds for the objection at least three days before the scheduled proceeding. Notice of the objection must be sent to the media representative who requested the coverage.

The judge shall rule on an objection before the scheduled proceeding or at the time the objection is raised. The judge may rule on the written objection and timely filed responses or the judge May give counsel, parties, witnesses, and requesting media personnel an opportunity to present additional evidence by affidavit or by other means as the judge may direct. The judge may extend or reduce the time for filing an objection. The judge may extend the right of objection to a person not specifically provided for in this rule.

Section 7. Equipment and media personnel. Unless the court directs otherwise, equipment used in a judicial proceeding is limited to a single television camera operated by one person and one audio system for radio broadcasts. Only one still photographer is allowed in a judicial proceeding. Any media pooling needed because of these limitations on equipment and personnel is the sole responsibility of the media and must be arranged before coverage without calling on the court to mediate. Every effort must be made for the joint use of broadcasting equipment within the courtroom. Wires, microphones, and similar equipment must be placed as unobtrusively as possible within the courtroom at least fifteen minutes before the proceeding and must be secured or taped down when appropriate. Artificial lighting and flashbulbs are not permitted. Only equipment that does not produce distracting noises is allowed in the courtroom. Media coverage outside the courtroom must be handled with care and discretion, but need not be pooled or held to the restrictions of this rule.

The quantity and types of equipment permitted in the courtroom is in the discretion of the judge.

Section 8. Technical.

a. All equipment, including television cameras, is to be designed or modified so participants in the judicial proceeding being covered are unable to determine when recording is occurring. Still cameras must be selected for quietness, and be operated unobtrusively and as quietly as possible.

b. Microphones for counsel and judges must be equipped with off and on switches to facilitate compliance with Section 4(d).

c. With the judge's approval, existing courtroom light sources may be modified (e.g., higher wattage light bulbs), if the modifications are made and maintained without public expense.

d. Audio pickup for expanded media coverage must use any existing audio system in the courtroom, if the pickup would be technically suitable for broadcast. If possible, electronic audio recording equipment and any media personnel must be located outside of the courtroom.

e. Media personnel must be located in, and coverage of the proceedings must take place from, an area or areas designated by the judge. The area or areas designated must provide reasonable access to the proceeding to be covered.

f. Television cameras and audio equipment may be installed or removed from the courtroom only when the court is not in session.

Section 9. Decorum. The decorum and dignity of the court, the courtroom, and the proceedings must be maintained at all times. Court customs must be followed. Media personnel shall dress appropriately for the proceedings. Movement about the courtroom is limited, and efforts must be made not to leave the courtroom while proceedings are in progress. Loud talking is not permitted while proceedings are in progress.

Section 10. North Dakota Advisory Commission on Cameras in the Courtroom. The North Dakota Advisory Commission on Cameras in the Courtroom is appointed by the Chief Justice, and consists of two members of the North Dakota Bar Association, two members of the North Dakota Judicial Conference, one member of the Dakota Press Photographers Association, two members of the North Dakota Broadcasters Association, one member of the North Dakota Trial Lawyers Association, and, if appointed as a member, the person designated in Section 3. The associations or their presidents recommend their members for appointment. Members serve staggered three-year terms, and are eligible for reappointment. A member may not serve more than three consecutive terms. A former member who served three consecutive terms is eligible for reappointment after a six-year break in service. The Chief Justice designates the chair.

The Commission shall conduct a continuing evaluation of the operation of this rule and shall submit its findings and recommendations to the Supreme Court. The Commission shall receive and consider complaints from any person concerning the rules directed to it by the Supreme Court, and, if the complaint cannot be satisfactorily resolved by the Commission, submit a report to the Supreme Court.

Section 11. This rule as amended is effective July 1, 1995.

Dated March 1, 2006.

Appendix J
Administrative Rule 41 - Access to Court Records

Section 1. Purpose.

The purpose of this rule is to provide a comprehensive framework for public access to court records. Every member of the public will have access to court records as provided in this rule.

Section 2. Definitions.

(a)"Court record," regardless of the form, includes:

(1) any document, information, or other thing that is collected, received, or maintained by court personnel in connection with a judicial proceeding;

(2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by court personnel that is related to a judicial proceeding; and

(3) information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) "Court record" does not include:

(1) other records maintained by the public official who also serves as clerk of court;

(2) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in this rule;

(3) a record that has been disposed of under court records management rules.

(c) "Public access" means that the public may inspect and obtain a copy of the information in a court record.

(d) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

(e) "Bulk distribution" means the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

(f) "Compiled information" means information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(g) "Electronic form" means information in a court record that exists as:

(1) electronic representations of text or graphic documents;

(2) an electronic image, including a video image, of a document, exhibit or other thing;

(3) data in the fields or files of an electronic database; or

(4) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

Section 3. General Access Rule.

(a) Public Access to Court Records.

(1) Information in the court record is accessible to the public except as prohibited by this rule.

(2) There must be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication may not disclose the nature of the information protected.

(3) A court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided for in this rule, nor provide greater access than that provided for in this rule.

(b) When Court Records May Be Accessed.

(1) Court records in a court facility must be available for public access during normal business hours. Court records in electronic form to which the court allows remote access will be available for access subject to technical systems availability.

(2) Upon receiving a request for access to information, the clerk of court shall respond as promptly as practical. If a request cannot be granted promptly, or at all, an explanation must be given to the requestor as soon as possible. The requesting person has a right to at least the following information: the nature of any problem preventing access and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation must be in writing if desired by the requestor.

(c) Fees for Access. The court may charge a fee for access to court records in electronic form, for remote access, for bulk distribution or for compiled information. To the extent that public access to information is provided exclusively through a vendor, the court will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

Section 4. Methods of Access to Court Records.

(a) Access to Court Records at Court Facility.

(1) Request for Access. Any person desiring to inspect, examine, or copy a court record shall make an oral or written request to the clerk of court. If the request is oral, the clerk may require a written request if the clerk determines that the disclosure of the record is questionable or the request is so involved or lengthy as to need further definition. The request must clearly identify the record requested so that the clerk can locate the record without doing extensive research. Continuing requests for a document not yet in existence may not be considered.

(2) Response to Request. The clerk of court is not required to allow access to more than ten files per day per requestor but may do so in the exercise of the clerk's discretion if the access will not disrupt the clerk's primary function. If the request for access and inspection is granted, the clerk may set reasonable time and manner of inspection requirements that ensure timely access while protecting the integrity of the records and preserving the affected office from undue disruption. The inspection area must be within full view of court personnel whenever possible. The person inspecting the records may not leave the court facility until the records are returned and examined for completeness.

(3) Response by Court. If a clerk of court determines there is a question about whether a record may be disclosed, or if a written request is made under Section 6(b) for a ruling by the court after the clerk denies or grants an access request, the clerk shall refer the request to the court for determination. The court must use the standards listed in Section 6 to determine whether to grant or deny the access request.

(b) Remote Access to Court Records. The following information in court records must be made remotely accessible to the public if it exists in electronic form, unless public access is restricted under this rule:

(1) litigant/party indexes to cases filed with the court;

(2) listings of new case filings, including the names of the parties;

(3) register of actions showing what documents have been filed in a case;

(4) calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;

(5) judgments, orders, or decrees in a case and liens affecting title to real property;

(6) reports specifically developed for electronic transfer approved by the state court administrator and reports generated in the normal course of business, if the report does not contain information that is excluded from public access under Section 5 or 6.

(c) Requests for Bulk Distribution of Court Records.

(1) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under Section 3(a).

(2) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information under this subsection the requestor must comply with the provisions of Section 6.

(3) A court may allow a party to a bulk distribution agreement access to birth date, street address, and social security number information if the party certifies that it will use the data for legitimate purposes as permitted by law.

(d) Access to Compiled Information From Court Records.

(1) Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already in an existing report. The court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the court, that the resources are available to compile the information and that it is an appropriate use of public resources. The court may delegate to its staff or the clerk of court the authority to make the initial determination to provide compiled information.

(2) Requesting compiled restricted information.

(A) Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.

(B) The request must:

(i) identify what information is sought ,

(ii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and

(iii) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

(C) The court may grant the request and compile the information if it determines that doing so meets criteria established by the court and is consistent with the purposes of this rule, the resources are available to compile the information, and that it is an appropriate use of public resources.

(D) If the request is granted, the court may require the requestor to sign a declaration that:

(i) the data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes;

(ii) the information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes; and

(iii) there will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

Section 5. Court Records Excluded From Public Access.

The following information in a court record is not accessible to the public:

(a) Information that is not accessible to the public under federal law.

(b) Information that is not accessible to the public under state law, court rule, case law or court order, including:

(1) affidavits or sworn testimony and records of proceedings in support of the issuance of a search or arrest warrant pending the return of the warrant;

(2) information in a complaint and associated arrest or search warrant to the extent confidentiality is ordered by the court under Section 29-05-32 or 29-29-22, NDCC;

(3) documents filed with the court for in-camera examination pending disclosure;

(4) domestic violence protection order files and disorderly conduct restraining order files when the restraining order is sought due to domestic violence, except for orders of the court;

(5) names of qualified or summoned jurors and contents of jury qualification forms if disclosure is prohibited or restricted by order of the court;

(6) records of voir dire of jurors unless disclosure is permitted by court order or rule;

(7) records of deferred impositions of sentences resulting in dismissal;

(8) personal information:

-- except for the last four digits, social security numbers, taxpayer identification numbers, and financial account numbers,

-- except for the year, birth dates,

-- except for the initials, the name of an individual known to be a minor, and,

-- in criminal cases, the home street address of an individual;

(9) judge and court personnel work material, including personal calendars, communications from law clerks, bench memoranda, notes, work in progress, draft documents and non-finalized documents.

(c) This rule does not preclude access to court records by the following persons in the following situations:

(1) federal, state, and local officials, or their agents, examining a court record in the exercise of their official duties and powers;

(2) parties to an action and their attorneys examining the court file of the action, unless restricted by order of the court, but parties and attorneys may not access judge and court personnel work material in the court file.

(d) A member of the public may request the court to allow access to information excluded under Section 5 as provided in Section 6.

Section 6. Requests to Prohibit Public Access to Information in Court Records or to Obtain Access to Restricted Information.

(a) Request to Prohibit Access.

(1) A request to prohibit public access to information in a court record may be made by any party to a case, by the individual about whom information is present in the court record, or on the court's own motion on notice as provided in Section 6(c).

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

(3) In deciding whether to prohibit access the court must consider that the presumption of openness may only be overcome by an overiding 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.

(4) The closure of the records must be no broader than necessary to protect the articulated interest. The court must consider reasonable alternatives to closure, such as redaction or partial closure, and the court must make findings adequate to support the closure. The court may not deny access only 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.

(b) Request to Obtain Access.

(1) A request to obtain access to information in a court record to which access is prohibited under Section 4(a), 5 or 6(a) may be made by any member of the public or on the court's own motion on notice as provided in Section 6(b).

(2) In deciding whether to allow access, the court must consider whether there are sufficient grounds to overcome the presumption of openness of court records and continue to prohibit access under applicable constitutional, statutory and case law. In deciding this the court must consider the standards outlined in Section 6(a).

(c) Form of Request.

(1) The request must be made by a written motion to the court.

(2) The requestor shall give notice to all parties in the case.

(3) The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under Section 6(a), the court must provide notice to the individual or entity that requested that access be prohibited.

Section 7. Obligations of Vendors Providing Information Technology Support To A Court To Maintain Court Records.

(a) If the court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this rule. For purposes of this section, "vendor" includes a state, county or local governmental agency that provides information technology services to a court.

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

APPENDIX to Administrative Rule 41

Statutes, court rules and policies, and federal regulations making certain records confidential, in whole or in part, include:

ND Century Code

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

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

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

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

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

14-09.2-06 Parent Coordinator proceedings

14-15-16(4) Adoption proceedings

14-20-54 Paternity proceedings

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

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

25-03.1-43 Mental health commitments

25-03.3-03 Commitment proceedings for sexually dangerous individuals

27-20-51 Juvenile court records

27-09.1-12(4) Jury selection records

29-10.1-30, -31 Grand jury proceedings

30.1-11-01 Wills deposited for safekeeping

37-01-34 Recorded military discharge papers

50-06-05.1(15) Social-psychological evaluations and predisposition reports provided by department of human services

Court Rules and Policies

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

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

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

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

Administrative Rule 40 Audiotapes of closed or confidential proceedings

Administrative Policy 215 Access to computer-based data

Administrative Policy 402 Access to Juvenile Court Records

Federal Regulations

22 C.F.R. Section 51.33 Passport records

Boards and commissions governed by rules adopted by the Supreme Court include: Commission for Continuing Legal Education; Disciplinary Board; Judicial Conduct Commission, State Board of Law Examiners.

Appendix K
Rule 3.4. - Privacy Protection for Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or, in a criminal case, the home address of an individual, a party or nonparty making the filing must include only:

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

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

(3) the minor's initials;

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

(5) in a criminal case, the city and state of the home address.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

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

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

(4) a filing covered by Rule 3.4 (c);

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

(6) an arrest or search warrant; and

(7) a charging document and an affidavit filed in support of a charging document.

(c) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) 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.

(e) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List.

(1) In General. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(2) Defendant Information. In a criminal case, the prosecutor must file a reference list that includes the defendant's social security number, birth date and street address.

(g) Non-conforming Documents.

(1) Waiver. A person waives the protection of Rule 3.4 (a) as to the person's own information by filing it without redaction and not under seal.

(2) Sanctions. If a party fails to comply with this rule, the court on motion of another party or its own motion, may order the pleading or other document to be reformed. If the order is not obeyed, the court may order the document stricken.

Appendix L
Administrative Rule 40 - Access to Audiotapes of Proceedings in District Court

SECTION 1. Authority

Under Article VI, Section 3 of the North Dakota Constitution, the supreme court has the authority to establish policies and procedures to be followed by all courts of the state. The court also has specific authority to establish policies relating to court records under 27-02-05.2, NDCC.

SECTION 2. Public Access to Audiotapes

1. Copies of the audiotaped recording of trial court proceedings made under this rule may be purchased by the public unless the proceeding is closed or confidential, or the judge has ordered that all or part of the recording not be available because:

a. it would materially interfere with a party's right to fair trial;
b. a witness or party has objected and shown good cause why it shouldnot be available;
c. it includes testimony of an adult victim or witness in a prosecution underChapter 12.1-20, N.D.C.C., or for charges in which an offense under thatchapter is an included offense or an essential element of the charge, unlessthe victim or witness consents;
d. it includes testimony of a juvenile victim or witness in a proceedingin which illegal sexual activity is an element of the evidence; or
e. it includes testimony of undercover agents or relocated witnesses.

2. The Council of Presiding Judges shall establish procedures to ensure appropriate access to audiotapes.

3. Video or electronic media coverage, if granted, is governed by Administrative Rule 21.

Dated at Bismarck, North Dakota, October 23, 1996.

Appendix M
Administrative Rule 47 - Record Searches

Section 1. Authority and Purpose.

In accordance with N.D. Const. art VI, §3, and N.D.C.C. §27-02-05.1, this rule establishes the method and manner in which clerks of district court respond to requests for searches of record information in the custody of the clerk and the manner in which search information is provided.

Section 2. Definition - Exception.

For purposes of this rule, "record search" means a search by the clerk of district court or staff of criminal or civil records regarding a specific person or entity at the request of a person or entity other than a party to a proceeding, or a party's representative, and the provision of search result information to the requestor. A request to confirm the existence or non-existence, or the filing, of a particular document or record, without regard to the specific contents of the document or record, is not a record search for purposes of this rule. A fee may not be assessed for responding to such a request.

Section 3. Search Request and Response.

A. Requests for record searches must be submitted in writing and must provide information sufficiently detailed to enable the clerk of district court to conduct the search without extensive research.

B. The clerk of district court shall respond as promptly as practical in writing to a request for a record search of criminal or civil record information. Verbal responses regarding search results are not permitted.

Section 4. Search Fee

A. The clerk of district court shall assess a records search fee in the amount prescribed by the Court Fee Schedule distributed by the State Court Administrator.

B. A fee must be assessed for each name, individual or corporate, and record category, civil or criminal, for which a search is requested.

C. The fee assessed under this section must be received by the clerk before the search results may be provided.

D. Any search fees received by a clerk of district court who is an employee of the unified judicial system must be forwarded for deposit in the state general fund.

Section 6. Effective Date.
This rule is effective June 1, 2001.

Appendix N
Policy 503 - Procedures for Accessing Tapes or CDs

SECTION 1. Authority and Purpose
Under Administrative Rule 40, the Administrative Council is assigned the responsibility of developing procedures to ensure appropriate access to audiotapes or compact discs of court proceedings.

SECTION 2. Request
Persons may request copies of audiotapes or compact discs of court proceedings by submitting the request in writing to the presiding judge or designee of the presiding judge.

SECTION 3. Fees
1. The state court administrator shall establish a reasonable fee for the service of copying and shipping audiotapes or compact discs of court proceedings.
2. The fees must be paid in advance by cash, money order, cashier's check, or credit card.
3. Checks, money orders, or cashier's checks should be made payable to the State of North Dakota. Funds must be forwarded according to normal accounting procedures.

SECTION 4. District Procedures
Each district shall establish procedures to ensure timely copying of tapes or compact discs upon request of parties and the public.

ADDENDUM - POLICY 503
Under Administrative Policy 503, the state court administrator is assigned the responsibility of establishing a fee for copies of audiotapes or compact discs of proceedings which have been electronically recorded. A fee of $25 for the first tape or compact disc and $5 for each subsequent tape or compact disc will be charged for each case copied. The fee shall cover all costs, including employee's time, supplies, and mailing by first class mail. The fee shall not apply to copies of tapes being forwarded to a transcript service.

Appendix O
Policy 402 - Juvenile Court Records - Confidential

I. Authority

Under Administrative Rule 35, the Supreme Court has the authority to issue administrative policies relating to the juvenile court which are to be followed by all courts in the state. The authority to keep records confidential and to release information is found in N.D.C.C. Section 27-2051.

II. Applicability

This policy applies to the Juvenile Courts and the Clerk of Court's office.

III. General

This policy establishes uniform procedures for the inspection, duplication and use of Juvenile Court records.

IV. Statement of the Policy

A. Juvenile Court records are confidential and not open to inspection or release except as provided by law and this policy.

B. General Disclosure - Exceptions.

1. Subject to section V, all papers, reports, notes, files or records of whatever nature or classification relating to a specific case are available for inspection or release of information contained within the file to the following:

a. the judge and staff of the juvenile court of any court in this state;

b. the parties to the proceeding or their counsel or guardian ad litem of any party;

c. a public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child;

d. any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court;

e. the professional staff of the department of corrections and rehabilitation's division of adult services when necessary for the discharge of their duties under to N.D.C.C. ch 54-23.4.

2. The working notes of the judge or referee shall not be released to any party.

3. Disclosure of any papers, reports, notes, files, or records may be restricted by court order.

C. Disclosure only with court order.

1. Upon written request or motion and subject to section V, a judge or referee of the Juvenile Court may permit inspection or release of pertinent information of all or some portion of a court record to the following:

a. persons or agencies conducting pertinent research studies or those having a legitimate interest in the proceedings but whose access is not otherwise permitted.

b. The victim or a member of the victim's immediate family on behalf of the victim or to an insurance company representing the victim.

c. The military if a release of information has been signed by the subject of the petition or the parents of the subject if the juvenile is under 18 years of age.

d. By the principal of any public or private school that is a member of the North Dakota High School Activities Association, or the superintendent of the child's school district, if a request pertaining to a specific child and incident is received and the request is for the purpose of enforcing the rules of the North Dakota High School Activities Association.

2. The working notes of the judge or referee shall not be released to any party.

D. Social service reports (960's).

Social Service Reports (960's) may be released to attorneys representing the parties involved. Unless otherwise ordered by the court, names of persons reporting the alleged incident shall be deleted from the reports. [Note: See N.D.C.C. Section 50-25.1-11(4).]

E. Duplication.

1. Documents generated by other agencies or entities.

a. Documents not original to the juvenile court shall not be duplicated except:

(1) for purposes of conducting a hearing, documents may be duplicated but must be returned to the court after the hearing; or
(2) upon written approval of the agency which originally created the document; or

(3) upon order of the court.

2. Documents generated by the juvenile court may be duplicated as appropriate to meet the informational needs of the entities or persons listed in section IV(B) of this policy, or any other person or entity deemed appropriate by the court.

F. Statistical Information.

Statistics and other general information which do not identify parties and which are generated in the normal cause of business may be released to any party, including the press.

Requests for special reports or information shall be forwarded to the State Court Administrator.

V. Drug and Alcohol Treatment Records - Limitations on Disclosure

Notwithstanding the disclosure of records permitted under section IV of this policy, drug and alcohol treatment records within a file and which are confidential under 42 CFR Part 2 will not be disclosed unless:

1. the person who is the subject of the records has signed a valid consent form authorizing disclosure; the court has found there is good cause for disclosure and has issued an authorizing order in accordance with 42 CFR Section 2.64 or 2.66, as applicable; or the court has issued an order authorizing disclosure in accordance with 42 CFR Section 2.63 or 2.65, as applicable.

For purposes of this section, "disclosure" includes duplication of records permitted under section IV(E) of this policy.

Approved by Supreme Court 04/09/03

Appendix P
Policy 215 - Data Access and Dissemination

A. Purpose

The intent of the North Dakota judicial system is to secure and safeguard computer-based information systems by establishing a policy governing judicial, public, criminal justice, law enforcement, and selected private agency access to trial court information stored electronically.

B. Statement of Authority and Intent

Under Article VI, Section 3, of the North Dakota Constitution, the Supreme Court has the authority to promulgate rules of procedure to be followed by all courts of the state. The Supreme Court has administrative responsibility over all courts of the state and may establish rules to exercise that authority as it deems necessary or desirable for the effective management of court records (27-02-05.1, NDCC).

C. Definitions

1. "User" is an individual who has appropriately requested and received authorization to use the computer based information systems.

2. Access" is the ability to view and print data stored within the information system and the supreme court administrative office will determine access level granted.

3. "Public information" is information deemed public by appropriate administrative rules.

4. "Access Levels".

a. Level 1 Access (Typically Public Access).

1) Read-only access (no add, update, or delete capabilities).
2) All information accessed has been deemed "public information".
3) Information deemed confidential will not be printed or displayed.

b. Level 2 Access (Typically Law Enforcement).

1) Read-only access (no add, update, or delete capabilities).
2) All information accessed has been deemed "public information".
3) Access to open cases initiated by the law enforcement agency requesting access.

c. Level 3 Access (Typically State's Attorneys).

1) Read-only access (no add, update, or delete capabilities).

2) Access to all information deemed "public information".

3) Access to selected confidential record series information.

i) Paternity proceedings.
ii) Deferred impositions resulting in dismissal.
iii) Protection orders.
iv) Ability to view and print the judge's calendar.
v) Ability to view and print the contact card.

d. Level 4 Access (Typically Clerks of Court).

1) Add, update, and delete access to all information for their respective county.
2) Read only access (no add, update, or delete capabilities) for public information for other counties or districts.

e. Level 5 Access (Typically State Court Personnel).

1) Add, update, and delete access to all information for their respective district.
2) Read only access (no add, update, or delete capabilities) for public information for other counties or districts.

D. Effect of Policy

This policy governs access to and dissemination of information stored electronically by or for the unified judicial system. Access to trial court information systems or data will only be granted according to this policy.

E. Public Access to Computer Based Data and Information Systems

1. Electronic access to computer based data or information systems by non-government entities or individuals shall not be allowed, except as provided below.

a. Reports specifically developed for electronic transfer approved by the state court administrator.

b. Terminals or computers for the public's access to court information systems will be allowed to access information which would otherwise be available.

2. Reports. Reports which are generated in the normal course of business are available if the report does not contain information which is confidential by law,

court rule, or court order.

3. Special Reports. Special reports for non-court entities will not be produced except as directed by the state court administrator.

4. Records or documents that are stored electronically and are otherwise available to the public by law or court rule are available upon a specific request.

F. Criminal Justice, Law Enforcement, and Selected Private Agency Access to Computer Based Data and Information Systems

1. Electronic access to computer based data and information systems by criminal justice agencies, law enforcement agencies, and private agencies providing probation extender services on contract with the judiciary will only be authorized according to the terms below.

a. An Online Access Request and Nondisclosure Agreement will be submitted by a public criminal justice agency, law enforcement agency, or appropriate private agency providing probation extender services to the state court administrator. The agency director/administrator shall attest that the data will be for legitimate organizational objectives only.

b. Upon receipt of Online Access Request and Nondisclosure Agreement, the state court administrator will circulate the request to the presiding judge and appropriate staff for comment prior to authorization being granted.

c. When granted, authorization will be in accordance with the terms listed in the Online Access Request and Nondisclosure Agreement.

d. All costs for computer hardware, communications, software, and personnel to support agency access to computer based data and information systems shall be the responsibility of the agency requesting access.

e. Multiple levels of access will be available.

1) Each level will allow access to different classes of information.
2) Each user will be granted access to only one level.
3) Access authorized will be determined by the state court administrator's office.

f. Agencies must list on the Online Access Request and Nondisclosure Agreement the name of each person requesting access.

1) Each person authorized access will be given a unique user identification code.
2) User identification codes are for a single individual and are not to be shared.

g. The Online Access Request and Nondisclosure Agreements will be maintained by the state court administrator's office.

2. Any authorized agency understands their access can be discontinued if the access adversely impacts the system performance to court users. If the information is used outside the scope of legitimate organizational objectives, access may be terminated immediately. A written notification will be provided to the agency director or administrator.

Approved by the Supreme Court 06/30/99

Appendix Q
North Dakota Code of Judicial Conduct CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE

IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by **law***. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the **law*** and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall **require*** order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5)A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. A judge shall refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

Commentary:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to

parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as gender bias and must require the same standard of conduct of others subject to the judge's direction and control. Examples of conduct that may not be sexual harassment but may exhibit bias based on gender include using terms of endearment or inappropriate forms of address or making assumptions based on gender stereotypes. See, e.g., Huesers v. Huesers, 560 N.W.2d 219, 223-224 (N.D. 1997) (Maring, J., concurring).

(6)A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceedings.

Commentary:

A judge must establish, maintain, and enforce high standards of conduct to preserve the integrity of the judiciary and judicial proceedings. A judge has the duty under Section 3B(6) to intervene when inappropriate conduct occurs in proceedings before the judge. See, Johnson v. Johnson, 544 N.W.2d 519, 522 (N.D. 1996); Vitko v. Vitko, 524 N.W.2d 102, 105-106 (N.D. 1994) (Levine, J., concurring).

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented, except as otherwise provided by law (See, e.g., NDCC Section 27-08.1-03 governing small claims actions - "The court will conduct the proceeding and may make its own inquiry before, during, or after the hearing.").

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication shall be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of the office.

Commentary:

[1] Section 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality*, and independence of the judiciary. See also limitations imposed under Section 5A(3)(d). A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Section 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the North Dakota Rules of Professional Conduct.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary:

[1] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2)A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

(3) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the high standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(4) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before those judges and the proper performance of the judges' other judicial responsibilities.

(5) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary:

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(5).

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceedings;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding

Appendix R
North Dakota Rules of Professional Conduct - Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;
(2) information contained in a public record;
(3) that an investigation of a matter is in progress;
(4) the scheduling or result of any step in litigation;
(5) a request for assistance in obtaining evidence and information necessary thereto;
(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe there exists the likelihood of substantial harm to an individual or to the public interest; and
(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation, and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in the apprehension of that person;

(iii) the fact, time, and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of

information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile and mental health proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] This Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, this Rule applies only to lawyers who are, or who have been, involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a materially prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

> (a) the character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, or witness, or the identity of a witness, or the expected testimony of a party or witness;
> (b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
> (c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
> (d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
> (e) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
> (f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceedings involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury trials and arbitration proceedings may be even less affected. This Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements in criminal proceedings.

Appendix S
Local Media Policy and Procedures - Northeast Central Judicial District

A. Local Media Policy

1. To assure that judicial proceedings are not disrupted, members of the media shall confine camera and audio media coverage to designated areas not immediately adjacent to courtrooms to assure egress of participants and the public. The designated areas are the rotunda on the first floor of the Grand Forks County Courthouse and the main floor of the Nelson County Courthouse. Cameras and audio recorders are not allowed beyond these designated areas, except as provided in section B. Audio and/or video interviews of trial participants during any judicial proceeding are limited to this area.

2. Expanded media coverage shall be in strict compliance with the NECJD Media Policy, Procedure and Administrative Rule 21. Expanded media coverage is limited to the areas designated in Section A and the courtroom where the proceedings are being held.

B. Local Media Procedure

1. The media is to comply with the NECJD Media Policy and Administrative Rule 21. If the proceeding is scheduled less than 7 days in advance, a request for coverage must be given to the Court Administration Office as soon as practicable and in accordance with the NECJD Expanded Media Procedure as set forth in Section 3 below.

2. The media may forward inquiries and requests to Kathy Narlock, Administrative Assistant, at the following address:

NECJD Court Administration
124 S. 4th St.
PO 6347
Grand Forks, ND 58206-6347
FAX: 701-795-3886
Phone: 701-795-3824 Ext. 458

3. If the media has less than 7 days notice of a hearing, the media may proceed by expedited application for expanded media coverage:

a. The media representative may transmit or bring the request for expanded media coverage to the Court Administration Office as soon as practicable before the proceeding. Such request shall be on the appropriate form provided by the Court Administration Office. The Court Administration Office shall forward the request to the Clerk's Office. The Clerk's Office shall stamp the received date on the request, make copies and distribute the copies to all parties involved.

b. The Court Administration Office will contact the Clerk of Court Office, the judge or magistrate, and the reporter to inform them that there has been a request for expanded media coverage.

c. A party to the proceeding shall be given an opportunity to make any objection before expanded media coverage is allowed. The judge or magistrate shal1 inform counsel and any pro se party of whether expanded media coverage is granted.

d. The judge or magistrate will recess at an appropriate time, if necessary, to allow the media a reasonable time to set up their equipment if expanded media coverage is granted.

4. Each courtroom will have a designated location for expanded media coverage equipment and personnel.

a. The jury courtrooms (courtrooms 101, 301, and 302) will have designated locations for expanded media coverage during jury trials and during all other proceedings.

b. A diagram will be posted outside each courtroom indicating where the expanded media coverage is to be located within that courtroom.

c. The court reporter and the clerk will assist the judge to ensure that the expanded media coverage is in the designated location during court proceedings.

5. The media shall contact the Court Administration Office if they wish to be notified when a verdict has been reached. Court administration will notify the clerk that is clerking the jury trial of the name and phone number of the media station that wishes to be contacted.

C. Media Policy Checklist for Expedited Expanded Media

This checklist is for office use only and should not be filed with the expedited media request.

1. The media delivers (faxes) the request to the court administration office.

2. The court administration office shall contact the clerks' office (clerk of court and/or the chief deputy clerks), the judge or magistrate, and the reporter to inform them that there has been a request for expedited expanded media coverage. The court administration office shall then forward the request to the clerks' office.

3. The clerks' office shall stamp the received date on the request (not file), forward copies to all parties involved, indicate on the request to whom and when the copies were delivered, and then forward the request back to the judge or magistrate. (The request is not filed until the judge or magistrate has ruled on the request.)

4. A party to the proceeding shall be given an opportunity to make any objection before expanded media coverage is allowed. The judge or magistrate will notify staff if an oral hearing to make objections is necessary prior to the hearing.

5. If the judge or magistrate rules on the request without an oral hearing for objections, the judge or magistrate shall indicate on the request whether it is granted or denied and then forward the request

to the court administration office. The court administration office shall then forward the request to the clerk. The clerk shall forward copies to the parties and the media that made the request, indicate on the request to whom and when the copies were delivered, and then file the request.

6. If the judge or magistrate considers the request during a separate oral hearing for the parties to state their objections, or during the hearing for which the request is made, the judge or magistrate shall indicate on the request whether it is granted or denied and then forward the request to the clerks' office. The clerk shall indicate on the request that the parties were verbally notified of the ruling during the hearing, notify the media that made the request if they are not present at the hearing, and then file the request. The judge or magistrate shall recess at an appropriate time, if necessary, to allow the media a reasonable time to set up their equipment if expanded media coverage is granted.

Appendix T
Local Media Policy and Procedures - East Central Judicial District

REVISED MEDIA POLICY, Effective January 1, 2001

Revised June 1, 2006

East Central Judicial District

(Cass, Traill, and Steele Counties)

Electronic and Photographic Media Coverage of Judicial Proceedings

PURPOSE

The purpose of this policy is to establish guidelines for electronic and photographic media coverage in the East Central Judicial District. This policy is limited to pre-trial conferences, post-trial motions, and trials. It does not include interviews of judges or judicial personnel when not involved in a specific judicial proceeding.

GUIDELINES

A. To assure that judicial proceedings are not disrupted, members of the media shall confine camera and audio media coverage to areas not immediately adjacent to courtrooms to assure egress of participants and the public. The designated areas are the rotunda on the second floor of the Cass County Courthouse and the first floor of the Traill County Courthouse and the first floor of the Steele County Courthouse. Cameras and audio recorders are not allowed beyond these designated areas of any courthouse during any judicial proceedings, except as expressly provided in Section B. Audio and/or video interviews of trial participants during any judicial proceeding are limited to this area.

B. Exceptions to this policy are limited to those prescribed in North Dakota Supreme Court Administrative Rule 21. Any request for an exception to this policy is to be directed to the court administrator in writing at least 48 hours in advance of the judicial proceeding.

1. All media coverage and all applications for "expanded media coverage" shall be in strict compliance with Administrative Rule 21, except as modified hereafter.

2. All requests for "expanded media coverage" pursuant to Administrative Rule 21 shall be by a "designated representative" of the "expanded media" as such phrase is defined in Administrative Rule 21.

a. On an annual basis, the media shall select a designated representative and shall submit that representative's name in writing to the court administrator. The East Central Judicial District shall not grant any request for expanded media coverage without written notification of the designated representative.

b. The designated representative shall be the only contact between the Court and the media.

c. It shall be the sole responsibility of the designated representative and his/her organization to cooperate with all other organizations to provide immediate access to video or audio hookups, or to photographs or tapes.

d. Due to the "pooling" requirements set forth in 2(c), the following additional rules shall be observed where applicable to a particular media mode:

1. Only one TV or video camera, and a reasonable number of microphones in the Courtroom, with a single output line for audio and a single output line for video;

2. Only one media operator present in the Courtroom. The operator is to remain in the same spot and not move about in the Courtroom;

3. Only one still camera photographer in the Courtroom. The photographer will remain seated in one spot as designated by the judge;

4. If the audio/video feed is sent to a non-secure area, one representative per media outlet will be allowed in the room where the pool feed is sent. If the audio/video feed is sent to a secured area, only one representative will be allowed in the room where the pool feed is sent.

3. The following shall be observed for all cases involving expanded media requests:

a. All media representatives in the courtroom shall be dressed appropriately: e.g., no blue jeans or t-shirts.

b. No artificial light shall be brought into the courtroom – ambient light only for TV/video or still cameras.

c. Each microphone shall have an on/off switch.

d. No transmitters of any type are allowed on the second or third floor of the courthouse, except as provided for in Section B(5).

e. There shall be no coverage during court recesses, or during bench conferences and in a jury trial, during periods in which the jury has been excused from the courtroom.

f. The judge must be present in the courtroom during all coverage.

g. Equipment must be installed and removed only during recesses.

h. To determine scheduling or cases in District Court, contact the Calendar Control Clerk: 241-5695 for civil cases; and 241-5667 for criminal cases.

i. All other inquiries regarding pooling in District Court should be directed to the court administrator at 241-5680.

j. Coverage in the courtroom, of whatever type, shall be at all times in strict compliance with the provisions of Administrative Rule 21.

4. Any procedure may be modified by the judge presiding over the proceedings if circumstances warrant such modification.

5. No proceeding, or part of a proceeding, may be transmitted live without the express written permission of the judge.

6. Failure to comply with these rules will result in the immediate revocation of expanded media coverage.

A written response shall be made by the court administrator to the media representative (after consultation with the judge presiding in the case) prior to commencement of the judicial proceeding.

POLICY REVIEW

This policy will be reviewed by the judges of the East Central Judicial District biannually. Suggested revisions should be addressed to the Presiding Judge for consideration.

Appendix U
Local Media Policy and Procedures– Southeast Judicial District

PURPOSE

The purpose of this policy is to establish guidelines for electronic and photographic media coverage in the Southeast Judicial District. This policy is limited to pre-trial conferences, post-trial motions, and trials. It does not include interviews of judges or judicial personnel when not involved in a specific judicial proceeding.

GUIDELINES

A. To assure that judicial proceedings are not disrupted, members of the media shall confine camera and audio media coverage to areas not immediately adjacent to courtrooms to assure egress of participants and the public. Each county has developed a plan specifically designating areas for media use which are included as appendixes to this case management plan. Cameras and audio recorders are not allowed beyond these designated areas of any courthouse during any judicial proceedings, except as expressly provided in Section B. Audio and/or video interviews of trial participants during any judicial proceeding are limited to this area.

B. Exceptions to this policy are limited to those prescribed in North Dakota Supreme Court Administrative Rule 21. Any request for an exception to this policy is to be directed to the court administrator in writing at least 48 hours in advance of the judicial proceeding.

1. All media coverage and all applications for "expanded media coverage" shall be in strict compliance with Administrative Rule 21, except as modified hereafter.

2. All requests for "expanded media coverage" pursuant to Administrative Rule 21 shall be by a "designated representative" of the "expanded media" as such phrase is defined in Administrative Rule 21.

    a. On an annual basis, the media shall select a designated representative and shall submit that representative's name in writing to the court administrator. The Southeast Judicial District shall not grant any request for expanded media coverage without written notification of the designated representative.

    b. The designated representative shall be the only contact between the Court and the media.

c. It shall be the sole responsibility of the designated representative and his/her organization to cooperate with all other organizations to provide immediate access to video or audio hookups, or to photographs or tapes.

d. Due to the "pooling" requirements set forth in 2(c), the following additional rules shall be observed where applicable to a particular media mode:

1. Only one TV or video camera, and a reasonable number of microphones in the Courtroom, with a single output line for audio and a single output line for video;

2. Only one media operator present in the Courtroom. The operator is to remain in the same spot and not move about in the Courtroom;

3. Only one still camera photographer in the Courtroom. The photographer will remain seated in one spot as designated by the judge;

4. If the audio/video feed is sent to a non-secure area, one representative per media outlet will be allowed in the room where the pool feed is sent. If the audio/video feed is sent to a secured area, only one representative will be allowed in the room where the pool feed is sent.

3. The following shall be observed for all cases involving expanded media requests:

a. All media representatives in the courtroom shall be dressed appropriately: e.g., no blue jeans or t-shirts.

b. No artificial light shall be brought into the courtroom – ambient light only for TV/video or still cameras.

c. Each microphone shall have an on/off switch.

d. No transmitters of any type are allowed on the second or third floor of the courthouse, except as provided for in Section B(5).

e. There shall be no coverage during court recesses, or during bench conferences and in a jury trial, during periods in which the jury has been excused from the courtroom.

f. The judge must be present in the courtroom during all coverage.

g. Equipment must be installed and removed only during recesses.

h. To determine scheduling or cases in District Court, contact the appropriate Clerk in each county.

i. All other inquiries regarding pooling in District Court should be directed to the court administrator at 241-5680.

j. Coverage in the courtroom, of whatever type, shall be at all times in strict compliance with the provisions of Administrative Rule 21.

4. Any procedure may be modified by the judge presiding over the proceedings if circumstances warrant such modification.

5. No proceeding, or part of a proceeding, may be transmitted live without the express written permission of the judge.

6. Failure to comply with these rules will result in the immediate revocation of expanded media coverage.

A written response shall be made by the court administrator to the media representative (after consultation with the judge presiding in the case) prior to commencement of the judicial proceeding.

POLICY REVIEW

This policy will be reviewed by the judges of the Southeast Judicial District biannually. Suggested revisions should be addressed to the Presiding Judge for consideration.

Appendix V
Local Media Policy and Procedures - South Central Judicial District

POLICY
South Central Judicial District
Electronic & Photographic Media Coverage of Judicial Proceedings

PURPOSE
The purpose of this policy is to establish guidelines for electronic and photographic media coverage in the South Central Judicial District. This policy is limited to judicial hearings which are pre-trial conferences and post trial motions, trials, and formal juvenile hearings. It does not include interviews of judges or judicial personnel when not involved in a specific judicial proceeding.

The twelve affected counties are:
Burleigh, Emmons, Grant, Kidder, Logan, Mcintosh, McLean, Mercer, Morton, Oliver, Sheridan and Sioux

GUIDELINES

A. To assure that judicial proceedings are not disrupted, media representatives shall confine camera and audio media coverage to areas, not immediately adjacent to courtrooms, to assure egress of participants and the public. The designated areas will be the main lobby or first floors of the courthouses of the South Central Judicial District. Cameras and audio records are not allowed beyond the first floor main lobby area of any courthouse for specific coverage during any judicial proceedings, except as expressly provided in Section C. Audio and/or video interviews of trial participants during any judicial proceeding shall be limited to this area.

B. Media representatives may contact the office of District Court Administrator at least 48 hours in advance of judicial proceedings for the assignment of a specific interview room for use by the press. This room shall be available to conduct personal interviews during the course of the judicial proceeding of interest.

C. Exceptions to this policy shall be limited to those prescribed in North Dakota Supreme Court Administrative Rule 21. Any request for an exception to this policy is to be directed to the office of the District Court Administrator in writing, at least 48 hours in advance of the judicial proceeding. The request shall outline:

1. The title of the action the media representatives wish to cover.
2. The names of the media personnel who will be providing coverage.
3. The duration and type of coverage being requested.

A written response shall be made by the District Court Administrator by the requesting agency (after consultation with the judge presiding in the case) prior to the commencement of the judicial proceeding.

POLICY REVIEW

This policy will be reviewed by the Judges of the South Central Judicial District every two years. Suggested revisions should be addressed to the Presiding Judge for consideration.

SUMMARY

These procedures assure that media representatives win be allowed general coverage of judicial proceedings. This policy assures the dignity of the participants involved in judicial proceedings in this judicial district.

Appendix W
Local Media Policy and Procedures - Southwest Judicial District

POLICY NO.1
Southwest Judicial District
Electronic & Photographic Media Coverage of Judicial Proceedings

1. PURPOSE:

The purpose of this policy is to establish guidelines for electronic and photographic media coverage in the Southwest Judicial District. This policy is directed to the judicial hearing, pre-trial conferences, trial, and post-trial motions.

The affected counties are:
Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark

2. GUIDELINES:

The following guidelines apply to the foregoing counties and for the foregoing purposes:

A. To assure that judicial proceedings are not disrupted and to assure ingress and egress of participants and the public, media representatives shall confine camera and audio media coverage to areas not immediately adjacent to courtrooms. The designated areas will be in main floor of the courthouses of the Southwest Judicial District. Cameras and audio equipment are not allowed beyond the main floor lobby area of any courthouse for specific coverage during any judicial proceedings, except as expressly provided in Subsection B. Audio and/or video interviews of trial participants during any judicial proceedings shall be limited to the first floor of the courthouse.

B. Exceptions to the foregoing policy shall be limited to those prescribed in North Dakota Supreme Court Administrative Rule 21. Any additional request for an exception to this policy is to be directed to the office of the Clerk of Court and the Judge in writing, at least 48 hours in advance of the judicial proceeding. The request shall outline:

1. The title of the action the media representatives wish to cover.
2. The duration and type of coverage being requested.
3. The specific request of what is to be excepted.

C. Media representatives may contact the Calendar Control Clerk at least 48 hours in advance of judicial proceeding for the assignment of specific space for use by the press. This space shall be available to monitor proceedings. Personal interviews during the course of the judicial proceedings of interest must be conducted in accordance with Section A.

3. POLICY REVIEW:

This policy will be reviewed by the Judges of the Southwest Judicial District every two

(2) years. Suggested revisions should be addressed to the Presiding Judge for consideration.

4. SUMMARY:
These procedures assure that media representatives will be allowed general coverage of judicial proceedings in accordance with this policy and Administrative Rule 21. This policy assures the dignity of the participants and the integrity of the judicial proceedings in this judicial district.

Dated this 1st day of December, 2009.

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