

RECORD ACCESS
Rules of Public Access to
Records of the Judicial Branch

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Rules of Public Access to Records of the Judicial Branch

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TEXT OF RULES

Rule 1. Scope of Rules

Subdivision 1. Application; Conflicts; Local Rules. These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. To the extent that there is any conflict between these rules and other court rules, these rules shall govern. Any court may recommend rules, whether denominated as a rule or standing order, governing access to its records that do not conflict with these rules or the General Rules and Practice for the District Courts, and those recommended rules or standing orders shall become effective as ordered by the Supreme Court.

Subd. 2. Exclusions. These rules do not govern access to records of the Tax Court, the Workers' Compensation Court of Appeals, or the Office of Administrative Hearings, which are part of the executive branch of the state, except to the extent that such records are submitted in an appeal or proceeding in a judicial branch court. In addition, these rules do not govern access to the substantive and procedural records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A. Finally, except as provided in Rule 4, subd. 1(b), with respect to case records, these rules do not govern access to records of judicial branch court services departments or probation authorities. Access to these records is governed by Minnesota Statutes, section 13.84, or any successor statute, and other applicable court rules and statutes.

Subd. 3. Retention Unaffected. Nothing in these rules shall affect the disposition of records as authorized by Minnesota Statutes, section 138.17, or any successor or prevent the return of documents or physical objects to any person or party in accordance with a court rule or order.

Subd. 4. Filer's Obligations and Enforcement Sanctions Addressed Elsewhere.

Various other court rules place obligations on parties and participants filing documents with the court to correctly designate non-public documents when filing (e.g., Minn. Gen. R. Prac. 14 (electronic filing)), to redact certain data elements from documents before filing (e.g., Minn. Gen. R. Prac. 11.02 (restricted identifiers such as Social Security numbers and certain financial account numbers); Minn. R. Juv. Prot. P. 8 (various elements in juvenile protection matters)), and to face sanctions for failure to comply (e.g., Minn. Gen. R. Prac. 11.04 (appropriate sanctions including costs of redaction and potential striking of pleadings)). Following these rules correctly is critical to ensuring appropriate public access to court records as court staff are not required to review every word of every document submitted to the court for filing to determine if it is appropriately accessible to the public. To the extent that noncompliance is brought to the attention of the court, various rules may require, among other possible relief or action, that a document be temporarily segregated from public view until the redaction rules can be enforced.

(Amended effective July 1, 2005; amended effective July 1, 2015.)

Advisory Committee Comment - 2015

Rule 1 is amended in 2015 to recognize that these rules control in case of conflict with other court rules. A list of rules that are consistent with these access rules is included in Rule 4, subd. 1(o).

Rule 1 is amended in 2015 to recognize that courts may seek approval from the Supreme Court for local rules addressing public access issues that do not conflict with these rules. A standing order that affects more than one case is considered a rule subject to the approval of the Supreme Court. This is consistent with other rules. See, e.g., Minn. R. Civ. P. 83; Minn. R. Crim. P. 1.03. Rule 1 is also modified to clarify that public access to the personnel records of the various Supreme Court boards are governed by Rule 5, subd. 1, of these rules, but that public access to other procedural and substantive records of such boards are governed by independent rules promulgated or approved by the Supreme Court.

Rule 1 is amended in 2015 to clarify that records of various executive branch entities, such as the Tax Court, Workers' Compensation Court of Appeals, and Office of Administrative Hearings are not governed by these rules unless and until they are submitted to the judicial branch in an appeal to the Minnesota Court of Appeals or the Minnesota Supreme Court, or become part of some other proceeding in the District Court. Some of these executive branch records are not accessible to the public in the hands of the executive branch, but once submitted to the judicial branch they are presumed to be accessible to the public under Rule 2 of these rules and parties will need to ensure that sensitive items, including Social Security numbers and financial account numbers, are properly redacted according to the governing court rules.

Rule 1 is amended in 2015 by adding a new subdivision 4 explaining obligations imposed on filing parties to protect certain private information from public disclosure in court filings. These obligations are set forth in other court rules and are necessary to ensure that the appropriate level of public access is maintained particularly for records maintained in electronic format.

Rule 2. General Policy

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8.

(Amended effective July 1, 2005.)

Rule 3. Definitions

Subdivision 1. Custodian. The custodian is the person responsible for the safekeeping of any records held by any court, court administrator, or clerk of court. In the absence of

the person usually responsible, the person who is temporarily responsible for the records is the custodian. For purposes of remote and bulk electronic access under Rule 8, the state court administrator shall be the custodian for case records that are maintained in computer systems administered by the state court administrator.

Subd. 2. Judge. "Judge" means any justice, judge, judicial officer, referee, magistrate, court-appointed arbitrator or other person exercising adjudicatory powers.

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District Court, and any other court established as part of the judicial branch of the state.

Subd. 4. Court Administrator. "Court administrator" means a person employed or appointed for the purpose of administering the operations of any court or court system, including the clerk of the appellate courts, state court administrator, judicial district administrator, and court administrator of district court.

Subd. 5. Records. "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript.

(a) *Case Records.* "Case records" means all records of a particular case or controversy.

(b) *Administrative Records.* "Administrative records" means all records pertaining to the administration of the courts or court systems.

(c) *Vital Statistics Records.* "Vital statistics records" means all certificates or reports of birth, death, fetal death, induced abortion, marriage, dissolution and annulment, and related records.

(Amended effective July 1, 2005.)

Rule 4. Accessibility to Case Records

Subdivision 1. Accessibility. Subject to subdivision 4 of this rule (Records Referring to Information in Non-Public Documents) and Rule 8, subdivision 5 (Access to Certain Evidence), the following case records are not accessible to the public:

(a) *Domestic Abuse and Harassment Records.*

(1) Records maintained by a court administrator in accordance with the domestic abuse act, Minnesota Statutes, section 518B.01, until a court order as authorized by Minnesota Statutes, section 518B.01, subdivision 5 or 7, is executed or served upon the record subject who is the respondent to the action.

(2) Records of harassment restraining order proceedings maintained by a court administrator in accordance with Minnesota Statutes, section 609.748, until a court order as authorized by Minnesota Statutes, section 609.748, subdivision 4, is executed or served upon the record subject who is the respondent to the action. Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public but may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

(3) A law enforcement information form provided by the petitioner in a proceeding under clause (1) or clause (2) of this rule. "Law enforcement information form" means a document in the form of OFP105 or HAR103 as published by the state court administrator on the website www.mncourts.gov. A law enforcement information form may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

(b) *Court Services Records.* Records on individuals maintained by a court that are gathered at the request of a court to:

(1) determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts (including, without limitation, support or attendance letters, e.g., regarding Alcoholics Anonymous, submitted by or for a party),

(2) assist in assigning an appropriate sentence or other disposition in a case (including, without limitation, disposition advisor memoranda or reports in criminal matters),

(3) provide the court with a recommendation regarding the custody of minor children, or

(4) provide the court with a psychological evaluation of an individual.

Provided, however, that this paragraph (b) does not apply to social services reports and guardian ad litem reports to the court in juvenile protection matters governed by the Rules of Juvenile Protection Procedure, which must be filed with the court in accordance with Minn. R. Juv. Prot. P. 8, subd. 5(b). In addition, the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

(c) *Judicial Work Product and Drafts.* All notes and memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared in accordance with Minnesota Statutes, sections 546.24 and 546.25.

(d) *Juvenile Appeal Cases.* Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the appellate court's written opinion or unless otherwise provided by rule or order of the appellate court.

(e) *Race Records.* The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, and the contents of race data fields in any judicial branch computerized information system, except that:

(1) the records may be disclosed in bulk format if the recipient of the records:

(A) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which either the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

(B) obtains an order from the Supreme Court authorizing the disclosure;

(2) A juror's race may be disclosed to the parties or their attorneys as part of the juror profile information unless otherwise provided by law or court rule.

Nothing in this section (e) shall prevent public access to source documents such as complaints or petitions that are otherwise accessible to the public.

(f) *Medical Records.* Records that are from medical, health care, or scientific professionals (including but not limited to reports and affidavits) that are of the following types:

(1) Records that relate to the past, present, or future physical or mental health or condition of an individual, including but not limited to medical history, examinations, diagnoses and treatment, pre-petition screening reports, and court-appointed examiner reports and any other records designated by the presiding judge as medical records; and

(2) Records on genetic information. For purposes of this rule, "genetic information" means information about a specific human being that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the presence or absence of a specific deoxyribonucleic acid or ribonucleic acid marker or markers, and which has been

obtained from an analysis of an individual's biological information or specimen or the biological information or specimen of a person to whom an individual is genetically related.

(g) *Request for Assistance Other Than Counsel and Any Resulting Order.* A request made under Minnesota Statutes, section 611.21, for assistance other than counsel and any resulting order. The register of actions may publicly disclose the existence of the request and the order granting or denying the request, but not the substance of the assistance sought or granted.

(h) *Response to Petition for Criminal Expungement.* A response to a petition for expungement filed with the court under Minnesota Statutes, section 609A.03, shall not include any confidential or private data except on a separate document clearly marked as sealed or confidential, provided that the petition included or was accompanied by a request by the petitioner to seal or declare as not accessible to the public any private or confidential data as defined by Minnesota Statutes, chapter 13, included in a response to the petition by an agency or jurisdiction that is subject to Minnesota Statutes, chapter 13. When submitting a response and separate document via the court's E-Filing System, the agency or jurisdiction filing the separate document must also appropriately designate the separate document as sealed or confidential by selecting the appropriate designation in the court's E-Filing System. The agency or jurisdiction filing a response to the petition shall be entirely responsible for ensuring compliance with this rule. The court administrator is not responsible for reviewing filings for compliance with this rule. The court may issue appropriate sanctions for failure to comply with this rule.

(i) *Will Deposited for Safekeeping During Testator's Lifetime.* A will deposited with the court for safekeeping under Minnesota Statutes, section 524.2-515, except that upon proof of a testator's death the existence of the testator's will on deposit with the court may be publicly disclosed. Access to the will during the testator's lifetime by the testator, testator's attorney or agent, guardian or conservator is governed by Minn. Gen. R. Prac. 418. The court, following notice of the testator's death, may deliver the will to the appropriate court and may order that copies of the will be provided to appropriate persons.

(j) *Administrative Warrants.* All records of a request, and any resulting order, submitted pursuant to Minnesota Statutes, section 182.659, subdivisions 6, 7 (Occupational Safety and Health Inspection), Minnesota Statutes, section 299F.08, subdivision 2 (authorization for entry by state fire marshal), Minnesota Statutes, section 340A.704 (authorization for search warrants for liquor law violations), and for housing code inspections authorized pursuant to *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), and *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013), unless and until the search or inspection authorized by the court has been completed, except by order of the court or consent of the official submitting the request. The person seeking to file the request for warrant/inspection shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for warrant/inspection for filing into that court case file.

(k) *Motion to Enforce or Quash Attorney General or County Attorney Subpoena.* A request for an order enforcing or quashing an administrative subpoena issued pursuant to Minnesota Statutes, section 8.16 or 388.23, unless and until authorized by order of the court. The person seeking to file the request shall contact the court administrator, who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for filing into that court case file.

(l) *Release of Video Recordings for Use in Administrative Hearing.* All records of a petition, and any resulting order, submitted pursuant to Minnesota Statutes, section 611A.90, seeking release of or access to a video recording of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse and for use as provided in an administrative proceeding (see, e.g., Minnesota Statutes, section 256.045, subdivision 4), except by order of the court. The person seeking to file the petition shall contact the court administrator,

who will establish a confidential file in the court's case records management system and provide the file number to the person seeking to file, who may then submit the request for order for filing into that court case file.

(m) *Minor Victim Identifying Information.*

(1) *Where Applicable.* Except as otherwise provided by order of the court, information that specifically identifies a victim who is a minor at the time of the alleged offense or incident in the following cases:

(A) criminal or juvenile delinquency or extended jurisdiction juvenile cases involving a petition, complaint, or indictment issued pursuant to Minnesota Statutes, section 609.322, 609.342, 609.343, 609.344, 609.345, 609.3451, or 609.3453;

(B) commitment proceedings related to a case in (A) above, in which supervisory responsibility is assigned to the presiding judge under Minn. R. Crim. P. 20.01, subd. 7, or 20.02, subd. 8(4);

(C) judicial review pursuant to Minnesota Statutes, section 256.045, subdivision 7, of maltreatment determinations made under Minnesota Statutes, section 626.556, that involve allegations of sexual abuse as defined by Minnesota Statutes, section 626.556, subdivision 2(d).

(2) *Burden on Filer.* No person shall submit information that specifically identifies a minor victim on any pleading or document filed with the court in the above cases except on a separate, confidential document entitled Confidential Victim Identifier Information. It shall not be a violation of this rule for a pleading or document to include generic references, including but not limited to "the victim" or "Child 1," and, unless otherwise ordered by the presiding judge, the victim's initials and year of birth.

(3) *Other Information Unaffected.* Nothing in this rule authorizes denial of access to any other data contained in the records, including the identity of the defendant.

(4) *Exception: Transcript.* Unless otherwise directed by the presiding judge, identifying information on a minor victim under this rule need not be redacted from a transcript of a public proceeding before such transcript is disclosed to the public.

(n) *Pre-Adjudication Paternity Proceedings.* Records of proceedings to determine the existence of parent-child relationship under Minnesota Statutes, sections 257.51 to 257.74, provided that the following are public: the final judgment under section 257.70(a) (minus findings of fact and restricted identifiers under Minn. Gen. R. Prac. 11), affidavits filed pursuant to Minnesota Statutes, sections 548.09 to 548.091, to enforce the judgment, and all subsequent proceedings seeking to modify or enforce the judgment except an appeal of the initial, final judgment. The subsequent proceedings shall be brought in the same case file provided that the register of actions in the case shall then be made public but identifying information on persons who were alleged to be the parent of the child but were not adjudicated as such parent will remain nonpublic, and documents that were not previously public will also remain nonpublic except that the register of actions may publicly reflect the existence of the document and its title.

(o) *Death Certificates.* A certificate of death issued by the proper governmental authority except to the extent that the certificate, or a redacted version of the certificate, has been formally admitted into evidence in a testimonial hearing or trial. The burden shall be on any filer e-filing a death certificate to classify the certificate as confidential. If it comes to the attention of the court administrator that a death certificate has not been appropriately classified as required under this rule the court administrator shall classify the document as confidential and notify the parties and the presiding judge of the classification change.

(p) *Information From DPS for Collection of Court Debt.* Social Security numbers obtained by the judicial branch from the Department of Public Safety for the purposes of collection of court debts.

(q) *Voluntary Foster Care for Treatment.* Records of judicial reviews of voluntary foster care for treatment under Minnesota Statutes, section 260D.06 (Records of voluntary foster care proceedings under Minnesota Statutes, section 260D.07, are accessible to the

public as authorized by these rules and by Minn. R. Juv. Prot. P., see clause (s)(2)(D), below.).

(r) *Juvenile Protection Case Records Child Name Search Results.* In juvenile protection case records, searching by a child's name shall not provide results through any public name search functionality provided by the court. For purposes of this rule "child" is defined as set forth in Minn. R. Juv. Prot. P. 2.01(4).

(s) *Other.* Case records that are made inaccessible to the public under:

- (1) state statutes, other than Minnesota Statutes, chapter 13;
- (2) court rules not inconsistent with these rules, including but not limited to:
 - (A) Minn. R. Adopt. P. 7 (all adoption case records);
 - (B) Minn. Spec. R. Ct. App. Family L. Mediation 7, 9 (appellate family mediation confidential information form and selection of mediator form);
 - (C) Minn. Gen. R. Prac. 114.08, 114.09 (notes, records and recollections of the neutral);
 - (D) Minn. R. Juv. Prot. P. 8, 16.01, subd. 1; 33.02, subd. 6 (various records and data elements in juvenile protection proceedings);
 - (E) Minn. R. Crim. P. 9.03, subsd. 5-7, 18.04, 18.07, 25.01, 26.02, subd. 2, 26.02, subd. 4(4), 26.03, subd. 6, 33.04, 36.06 (in camera discovery materials, grand jury records, closed hearings and records, and search warrants);
 - (F) Minn. Gen. R. Prac. 313 (2004) (Social Security numbers and tax returns submitted to the court prior to July 1, 2005);
 - (G) Minn. Gen. R. Prac. 11, 361.02, 361.05, 370.04, 371.04, 372.04, 807(e), 814 (restricted identifiers and financial source documents submitted to the court on or after July 1, 2005; juror records);
 - (H) Minn. Spec. R. Commitment & Treatment Act 13, 21 (medical records in all commitment matters and all records in proceedings for commitment of a minor);
 - (I) Minn. R. Civ. App. P. 112 (confidential or sealed portions of the record on appeal); and
 - (J) Minn. R. Civ. P. 47.01 (supplemental juror questionnaire).
- (3) court orders; or
- (4) other applicable law.

The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public.

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules. A court may restrict access to public case records in a particular case only if it makes findings that are required by law, court rule, or case law precedent. The factors that a court must consider before issuing a restrictive order in regard to criminal case records are discussed in Minn. R. Crim. P. 25, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For a discussion of the factors to consider in civil cases, see Minn. R. Civ. P. 26.03 and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For standards to consider in cases involving a child in need of protective services, see Minn. R. Juv. Prot. P. 8.07. For factors to consider in juvenile delinquency cases, see Minn. R. Juv. Del. P. 10.06, subd. 5. For factors to consider for restricting public access to jury records, see Minn. Gen. R. Prac. 814(a).

Subd. 3. Access to Recordings. This subdivision governs access to recordings of proceedings in the district court:

(a) **General.** Recordings of proceedings in the district court, including without limitation those used as a back-up to a stenographically recorded proceeding or as the

electronic recording, are intended to assist in the preparation of a transcript. The transcript, and not the recording, is the official record of the proceedings. Recordings of proceedings in the district court may only be used as authorized in this or other applicable rules or orders promulgated by the Supreme Court.

(b) **Off the Record Remarks.** Any spoken words in the courtroom that are not a part of a proceeding, hearing or trial of a specific case are not intended to be recorded. Recordings of such words may not be listened to or used in any way other than by authorized operators of the recording equipment to orient themselves on recording content.

(c) **Playback.** Playback of any part of the recording of a proceeding, hearing, or trial of a specific case is authorized in only the following situations:

- (1) during the proceeding, hearing or trial at the direction of the court;
- (2) by authorized operators of the recording equipment or an official court reporter or other authorized reporting service employee for the purpose of creating a transcript as the official record; and
- (3) at the direction of the court for the use of the court.

(d) **Disseminate by Transcript Only.** Except as provided in part (c) of this rule, the contents of the recording shall be disseminated by transcript only, which transcript, and not the recording, shall be the official record.

(e) **No Transcripts in Conciliation Court.** Nothing in this rule shall permit the transcription of conciliation court proceedings, hearings or trials. Playback of any part of the recordings of conciliation court proceeding, hearing or trial is authorized only at the direction of the court for the use of the court.

Subd. 4. Records Referring to Information in Non-Public Documents. Generally, a rule or law precluding public access to an entire document such as a report or medical record shall not preclude the parties or the court from mentioning the contents of the document in open court or in otherwise publicly accessible pleadings or documents such as motions, affidavits, and memoranda of law where such discussion is necessary and relevant to the particular issues or legal argument being addressed in the proceeding. Except as otherwise authorized by the presiding judge in a particular case, this rule permitting mention of otherwise non-public information shall not apply to:

- (a) Restricted identifiers governed by Minn. Gen. R. Prac. 11;
- (b) Identity of a minor victim of sexual assault under Rule 4, subd. 1(m), except that unless otherwise ordered by the presiding judge, such victim may be referred to by initials and year of birth;
- (c) Specific data elements protected by applicable law, court rule or order, including but not limited to those protected by Minn. R. Juv. Prot. P. 8.04, subd. 1(e); and
- (d) Records sealed by order in individual cases, unless otherwise directed by the court issuing such order.

Unless otherwise directed by the presiding judge, data elements in (a) through (d) of this rule that appear in a transcript of a public proceeding need not be redacted from the transcript before such transcript is disclosed to the public.

(Amended effective July 1, 2005; amended effective July 1, 2007; amended effective March 1, 2008; amended effective July 1, 2015; amended effective October 1, 2016.)

Advisory Committee Comment - 2005

The 2005 deletion of the word "temporary" in Rule 4, subd. 1(a), reflects statutory changes that allow the initial, ex parte order to be the permanent order of the court if no hearing is requested. See Minnesota Laws 1995, chapter 142, sections 4, 5 (amending Minnesota Statutes, section 518B.01, subs. 5, 7).

The 2005 reorganization of Rule 4, subd. 1, parts (d) and (f) is not substantive in nature. Trial level juvenile court proceedings that are not accessible to the public include adoption (Minnesota Statutes 2004, section 259.61; MINN. R. ADOPTION P. 8.01 (effective 1-1-

2005), delinquency and extended jurisdiction juveniles (except where there are felony level charges and the juvenile was at least 16 years old at the time of the offense) (Minnesota Statutes 2004, section 260B.163, subd. 1(c); MINN. R. JUV. DEL. P. 2.01), and other proceedings closed to the public by order of the court on a case-by-case basis (see, e.g., MINN. R. JUV. PROT. P. 27.01 (permitting closure of child protection proceeding only in exceptional circumstances, and requiring public access to closure order)). If a trial level juvenile court proceeding is not accessible to the public, then Rule 4, subd. 1(d) precludes public access to the appellate records related to that proceeding except the written opinion of the appellate court or unless otherwise ordered by the court.

The 2005 addition of race records in Rule 4, subd. 1(e) is based on the understanding that race and ethnicity information is not solicited from participants for the purpose of reselling race status of individuals to commercial enterprises. The goal is to ensure fair resolution of cases, and the rule attempts to provide a limited right of public access consistent with that goal. Access to race records, e.g., for research purposes, can be obtained under a nondisclosure agreement that limits ultimate public disclosure to aggregate statistics that do not identify individual participants. The Supreme Court has a longstanding tradition of authorizing disclosure of juvenile court records for scholarly research using nondisclosure agreements. See, e.g., *Order Authorizing Disclosure of Juvenile Court Database for Research Purposes*, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001).

The substitution of a periodically updated list of inaccessible case records for the former Appendix B in Rule 4, subd. 1(f) recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify case records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix B quickly became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

The 2005 changes to Rule 4, subd. 2, recognize that a number of rules address restrictive orders. The factors to consider in seeking a protective order in regard to criminal case records are discussed in *Minn. R. Crim. P. 25*, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see *Minn. R. Civ. P. 26.03* and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For child in need of protective services cases, see *Minn. R. Juv. Prot. P. 8.07*. For juvenile delinquency cases, see *Minn. R. Juv. Del. P. 10.06* subd 5.

Advisory Committee Comment - 2007

The 2007 addition of Rule 4, subd. 1(f), is designed to provide some privacy protection for genetic information about individuals. The definition of "genetic information" is based in part on the privacy law governing executive branch genetic information. Act of June 1, 2006, chapter 253, section 4, Minnesota Laws 2006 424, 426 (codified at Minnesota Statutes 2006, section 13.386). Genetic information can affect not only a party, witness or victim, but also his or her genetic relatives. Courts and parties need to consider the scope of this information when admitting and offering to admit such information into evidence. Rule 4, subd. 2, recognizes that, when necessary, protective orders can be issued under applicable procedural rules. The factors to consider in seeking a protective order in regard to criminal case records are discussed in *Minn. R. Crim. P. 25*, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see *Minn. R. Civ. P. 26.03* and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986).

Advisory Committee Comment - 2008

The 2008 addition of Rule 4, subd. 1(e)(2), is designed to recognize that race data is routinely disclosed to parties as part of juror profile information for purposes of voir dire.

The 2008 addition of Rule 4, subd. 3, is based in part on Il. 18th Cir. R. 1.03. Rule 4, subd. 3, attempts to clarify the application of the Rules to recordings of testimony in light of Supreme Court policy limiting audio and video coverage of trial court proceedings, and

to clarify the proper scope and role of recordings in preparing and preserving the official record.

The broad definition of "records" in Rule 3, subd. 1, appears to include recordings of court proceedings, but arguably may not include court reporter's notes. Assuming that recordings are included, it is not clear whether recordings would then be subject to the work product exception to public access (Rule 4, subd. 1(c)) or the presumption of public access (Rule 2). Assuming the presumption applies, public access creates significant administrative burdens, unresolved issues regarding what constitutes the official record, and conflicts with the Supreme Court's policy limiting audio and video coverage of trial court proceedings. Minn. Gen. R. Prac. 4; Mn. Code Jud. Conduct Canon 3A(11); Minn. S. Ct. Order, *In Re Modification of Section 3A(10) of the Minnesota Code of Judicial Conduct*, # C7-81-300 (filed Jan. 11, 1996) (reinstating experimental program for audio and video coverage of trial court proceedings). Although the conflict might be partially reduced by permitting public access but no public dissemination of copies of the recordings, this conflicts with the policy in Rule 2 permitting both inspection and copying. Rule 4, subd. 3, provides a straightforward resolution of all conflicts and it includes controlled playback access in appropriate circumstances.

Rule 4, subd. 3(a), recognizes that the transcript is the official record and that recordings are intended to support the creation of that record. Use of recordings is limited as provided in the rule or in other rules or orders promulgated by the Supreme Court.

Rule 4, subd. 3(b), recognizes that courtroom microphones may inadvertently pick up conversation that is intended to be protected by the attorney client privilege or is simply intended to be private conversation. The rule does not permit public access to portions of recordings that contain this material.

The controlled playback access in Rule 4, subd. 3(c), reflects what typically occurs in practice. To the extent that any abuses occur, actions of the court in controlling playback are subject to appellate review. See, e.g., *Blanchard v. Golden*, No. C8-95-2390 (Minn. App. filed Feb. 29, 1996) (unpublished interim order) (denying appellant's motion for correction of transcript where trial court provided opportunity to listen to backup tape).

Rule 4, subd. 3(e), reflects the requirement of Minn. Gen. R. Prac. 504(c) which provides that conciliation court proceedings and trials shall not be reported. Judges presiding in conciliation court often use recordings to supplement their notes. Access to the recordings of conciliation court proceedings, hearings or trials is treated in the same manner as judge's notes under Rule 4, subd. 1(c), and their playback is subject to the control of the court.

Rule 4, subd. 3, does not address the procedures for requesting and obtaining transcripts, or for correcting or modifying the same. These matters are addressed in other appropriate rules and statutes. See, e.g., Minn. R. Civ. App. P. 110; Minn. R. Crim. P. 28.02, subds. 8, 9; Minnesota Statutes 2006, sections 486.02 to 486.03.

Advisory Committee Comment - 2015

Rule 4, subd. 1(a), is amended in 2015 to provide a consistent level of privacy to orders for protection involving domestic abuse under Minnesota Statutes, section 518B.01, and harassment restraining orders under Minnesota Statutes, section 609.748, as proceedings under either statute can involve domestic abuse. Courts have attempted to provide uniformity through use of standardized order forms but such forms may not always be used. The amended rule obviates the need to rely on forms. The information maintained by the court regarding the petitioner's location or residence that is not accessible to the public under the rule will typically include, but is not limited to, residence address and telephone number. The amendments also recognize that the courts provide a pass-through of a "law enforcement information form" (including, but not limited to information such as Respondent Employer Name, Employer Address, Nickname or Alias, Phone Number, Work Days/Hours, Additional Address to be Located, Expected Date/Time of Return, Vehicle Make, Vehicle Model, Vehicle Color, Vehicle License Plate Number, Vehicle License State, Respondent Has Vicious Animal, Respondent's Weapon Use or Possession) from the petitioner to law enforcement for purposes of ensuring effective and safe service and enforcement of any resulting order.

The courts do not utilize the law enforcement information form in determining whether a restraining order is appropriate.

Rule 4, subd. 1(b), is amended in 2015 to expressly add to the list of non-public records support letters submitted by or for a party and disposition advisor memos. Similar items are regularly included in pre-disposition reports from probation authorities, and this change attempts to provide consistent treatment of the same information regardless of its route to the court file. Language making the records public to the extent formally admitted into evidence in a publicly accessible, testimonial-type hearing or trial has been relocated to Rule 8, subd. 5, which addresses this issue globally.

Rule 4, subd. 1, is also amended in 2015 by adding part (g) to preclude public access to the substance of a request under Minnesota Statutes, section 611.21, for assistance other than counsel and any resulting order. The rule is intended to allow the register of actions to publicly disclose the existence of the request and the fact that an order granting or denying the request has been entered, but not to publicly disclose the substance of the assistance sought or granted. At least one district has a standing order precluding public access to these requests and resulting orders, and similar individual orders are common. Standing orders generally require approval of the Supreme Court. See, e.g., Minn. R. Crim. P. 1.03; Minn. R. Civ. P. 83. The rule obviates the use of such orders.

Rule 4, subd. 1, is amended in 2015 to add a new clause (h) that is intended to provide a procedure for carrying out recent legislative amendments codified as Minnesota Statutes, section 609A.03, subdivision 3, paragraph (d) (2014). This legislation authorizes an agency or jurisdiction that is served with an expungement petition to submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. The legislation further directs the agency or jurisdiction to inform the court and the petitioner that the submission contains private or confidential data, and provides that the petitioner may, at the time of filing the petition or after that time, file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction. Rule 4, subd. 1(h) allows the petitioner to include the request in the petition and upon such request the agency or jurisdiction must submit any confidential or private data to the court in a manner that protects such data from public view. This process attempts to avoid public disclosure of the confidential or private data before the petitioner can make a request.

Rule 4, subd. 1, is amended in 2015 by adding clause (i) to clarify the status of a filed will during a testator's lifetime. Minnesota Statutes, section 524.2-515, requires that the will be kept sealed and confidential during the testator's lifetime and that the court may deliver the will to the appropriate court upon testator's death. Neither section 524.2-515 nor Minn. Gen. R. Prac. 418 addresses a public index to such wills. Rule 4, subd. 1(i) requires proof of testator's death before the existence of a filed will may be publicly disclosed, and is based on rules in several other jurisdictions. See, e.g., 14 Verm. Stat. Ann. section 2; N. Car. Rule of Recordkeeping 6.9; and St. Joseph County Michigan probate FAQs posted at <http://www.stjosephcountymi.org/probate/faq.htm#c>.

Rule 4, subd. 1, is amended in 2015 to add clause (j) recognizing that various administrative warrants must be submitted in a secure manner in order to avoid improper advance disclosure. See, e.g., Minnesota Statutes, section 182.667, subdivision 3 (2014) (imposing criminal penalty for wrongful advance disclosure). A confidential case type must be established in the case management system in order to ensure that any related electronic filing remains undisclosed. The current technology in the E-Filing System does not allow the filer to establish a confidential case type (as apposed to allowing a filer to designate a particular document as confidential or sealed) so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (k) to recognize that the legislature intended that requests for an order enforcing or quashing an administrative subpoena issued pursuant to Minnesota Statutes, section 388.23, be handled in a confidential manner. Under

Minnesota Statutes, section 388.23, subdivision 4, the recipient of the subpoena is not authorized to disclose it except as necessary to respond to it or as directed by a court order, and Minnesota Statutes, section 388.23, subdivision 6, permits an ex parte application to enforce the subpoena, and provides that any resulting order need not be filed. Rule 4, subd. 1(k) provides the necessary confidentiality and recognizes that the order will be in the court's computer systems and although it may technically be considered filed it remains confidential unless and until authorized by order of the court. As is the case with administrative warrants under clause (j), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (l) to ensure confidentiality of petitions under Minnesota Statutes, section 611A.90, seeking release of certain video recordings of child victims for use in private administrative hearings. The video recordings depict a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse. If authorized the video recording may be used in administrative proceedings that are not accessible to the public. See, e.g., Minnesota Statutes, section 256.045, subdivision 4. As is the case with administrative warrants under clause (j) and motions to enforce or quash a county attorney subpoena under clause (k), a confidential case type must be established in the case management system, and the E-Filing System does not allow the filer to establish a confidential case type, so the court must establish the case type ahead of time. The rule places the burden on the filer to contact the court so that the necessary confidential case type can be established prior to the initial electronic filing in the case.

Rule 4, subd. 1, is amended in 2015 to add clause (m) to comprehensively address minor victim privacy in otherwise publicly accessible case records involving criminal sexual conduct offenses. The legislature in Minnesota Statutes, section 609.3471 (2014), attempted to do this, but the statute left out one offense and lacks clarity regarding the scope. Clause (m) adds the missing offense and clarifies when a closely-related commitment matter is included, what duties must be undertaken by anyone filing documents in such a case, and whether redaction of identifiers from a transcript is required when identifiers have been disclosed in testimony during a publicly accessible hearing or trial.

*Rule 4, subd. 1, is amended in 2015 to add clause (n) to ensure consistent treatment of post-adjudication paternity proceedings. Following the initial determination of a relationship between a parent and a child under Minnesota Statutes, sections 257.51 to 257.74, parties may seek to modify custody or support, and such modifications are brought either as separate custody or support proceedings or as a continuation of the initial paternity matter. When custody or support modifications are brought as a continuation, there is precedent for continuing to treat the matter as non-public. See *In re Disciplinary Action Against Terrazas*, 581 N.W.2d 841 (Minn. 1998) (dismissing supplementary ethics petition in part because the board's investigator viewed the trial court file without obtaining the approval of the parties or the court under section 257.70, and that file was a custody modification motion brought some five years after the initial paternity adjudication, see *Autenreigh v. Terrazas*, 1997 WL 309414, No CX-96-2482 (Minn. Ct. App. filed June 10, 1997)). The policy supporting privacy of the initial paternity proceeding, however, is no longer present as the final judgment has already become public. Minn. Gen. R. Prac. 371.10, subdivision 1, purports to make the hearings post-adjudication open to the public, but the rule arguably does not address the records. A few trial courts require that all modification proceedings be brought as separate proceedings, and this may be the preferred approach or best practice. This rule is aimed at providing consistent public access treatment for these modification proceedings regardless of how they are presented.*

Rule 4, subd. 1, is amended in 2015 to revise the catch-all paragraph by renumbering it as clause (o) and providing examples of other rules that establish non-public case record categories. The list is not exhaustive, but the rules included in the list are deemed to be consistent with these access rules and would not create a conflict under Rule 1, subd. 1, of

*these rules. Noteworthy changes in other rules that are new in 2015 include extending confidentiality to all records in commitment proceedings involving commitment of a minor and to juvenile protection proceedings in which a child is a party (e.g., in truancy and runaway cases the child is always a party, but is generally only a "participant" in other child protection cases involving abuse and neglect). Rule 4, subd. 2, is amended in 2015 to emphasize that closure of otherwise publicly accessible records by court order must be determined on a case-by-case basis with appropriate findings to support the closure. Cross references to rules and case law are included in the rule rather than the comment to better assist self-represented litigants. The analysis can be complex. For example, in a civil case a court must first examine the proceeding or document to determine whether it has historically and philosophically been presumed open to the public, and if so, the court must examine the constitutional right asserted to determine whether it "affords protection" to the proceeding or document in question. If this analysis suggests a right of access under the First Amendment, then "[i]n order to overcome the presumption in favor of access, a party must demonstrate that a compelling governmental interest exists and that the restriction on access is narrowly tailored to meet this governmental interest." *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 204 (Minn. 1986) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)). If the analysis fails to demonstrate a right of access borne out of a constitutional dimension, then the balancing test of the common law applies: "In order to overcome the [common law] presumption in favor of access, a party must show strong countervailing reasons why access should be restricted." *Schumacher*, *supra*, at 205-06. The burden on a party seeking closure in a criminal case is greater than that in civil cases. See *Minn. R. Crim. P. 25*; *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983).*

Rule 4, subd. 4, is added in 2015 to minimize the redaction burdens on all participants. It is based in part on existing Minn. Spec. R. Commitment & Treatment Act 21(b) (2014). It recognizes that although certain documents, such as medical records in a commitment case or a presentence investigation report in a criminal case, are not accessible to the public, their contents are necessarily routinely discussed in various pleadings and orders and at open hearings and trials with or without the report being admitted into evidence. Disclosure must be both necessary and relevant to the particular issues or legal argument being addressed as otherwise the rule would be a loophole for violating privacy interests of various individuals. Certain exceptions are necessary to ensure that certain data elements, such as social security numbers, remain non-public.

Rule 4, subd. 4, will have one noteworthy impact on the application of Minn. R. Civ. App. P. 112.03, which requires the parties to "take reasonable steps to prevent the disclosure of confidential information" in otherwise publicly accessible documents submitted on appeal. It is likely that most issues and facts discussed in publicly accessible appellate court documents have also been discussed in publicly accessible pleadings, affidavits, motions, etc., at the trial court such that under Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4, the discussion itself is not "confidential" information within the scope of Minn. R. Civ. App. P. 112.03. This is a complex issue, however, and one that may not be readily grasped if Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4, and Minn. R. Civ. App. P. 112.03 are not read together.

Advisory Committee Comment - 2016

Rule 4, subd. 1(k), is amended in 2016 to provide a consistent level of privacy to proceedings to enforce or quash Attorney General or County Attorney subpoenas issued pursuant to Minnesota Statutes, section 8.16 or 388.23. The underlying statutes are nearly identical.

Rule 4, subd. 1(m), is amended in 2016 to add human trafficking under Minnesota Statutes, section 609.322, to the list of offenses for which minor victim identifiers are not publicly accessible. The legislature has already added Minnesota Statutes, section 609.322, in its corollary list of offenses in Minnesota Statutes, section 609.3471, for which such confidentiality is required.

Rule 4, subd. 1(n), is amended in 2016 to codify a more efficient means of making post-adjudication paternity proceedings accessible to the public. Rather than requiring court staff to open a new file, the amendment allows post-adjudication proceedings to be filed in the same paternity file and be publicly accessible to the same extent that a child support modification in a family law dissolution case is publicly accessible. The entire register of actions will be accessible to the public, but the identities of non-adjudicated putative parents will remain confidential. Documents that were not public before the post-adjudication proceedings commenced will remain nonpublic, but the now-public register of actions will reflect the existence of each such document, and will display the document's title but not its content. The purpose of the modification is to make case processing easier for court staff by keeping filings in the same case file.

Rule 4, subd. 1(o), is new in 2016 to make death certificates inaccessible to the public (except for death certificates admitted as exhibits in testimonial hearings or trials). Death certificates frequently contain Social Security numbers, which under Minn. Gen. R. Prac. 11 cannot be filed with the court on public documents. Death certificates are filed in several types of cases, including probate, custody, child protection, civil and conciliation court, and sometimes certified copies are required. Certified copies should not be altered in any way.

Rule 4, subd. 1(p), is new in 2016 and establishes confidentiality for Social Security numbers obtained by the Judicial Branch from the Department of Public Safety for the purpose of collecting court debts. The Judicial Council intends to ask the legislature for permission to obtain Social Security numbers from the Department of Public Safety to facilitate the effective collection of court debts. This will be more efficient and effective than the current skip trace means of obtaining such information and will enable the courts to utilize revenue recapture as a debt collection method.

Rule 4, subd. 1(q), is new in 2016 and creates confidentiality for records filed pursuant to Minnesota Statutes, section 260D.06. Unlike child protection proceedings that involve the government stepping in when children are not adequately cared for by their parents, Minnesota Statutes, section 260D.06, proceedings involve responsible parents seeking government assistance to secure necessary treatment for their children that they would otherwise not be able to afford. Parents with more financial resources are able to obtain similar care for their children while maintaining privacy. Providing confidentiality for records of Minnesota Statutes, section 260D.06, proceedings places all parents on equal footing. In contrast, making the records public may discourage parents from seeking treatment for their children.

Rule 4, subd. 1(r), is new in 2016 and is intended to increase public access to child protection case records. Previously, all child protection records in cases in which a child was formally a party (e.g. in truancy and runaway cases the child is always a party, but is generally only a "participant" in other child protection cases involving abuse and neglect) were not accessible to the public under Minn. R. Juv. Prot. P. 8.04, subd. 4(c). That approach reflected the limits of the technology in that there was no other means available to prevent name searches of children when they were formally a party. The technology has evolved, however, and the new approach is to open up these cases but prohibit name searches of children.

Rule 5. Accessibility to Administrative Records

All administrative records are accessible to the public except the following:

Subdivision 1. Personnel Records. Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints

or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation, excluding information that would identify confidential sources who are employees of the judicial branch; the terms of any agreement settling any dispute arising out of an employment relationship; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and county of residence.

(a) For purposes of this subdivision, a final disposition occurs when the person or group that is authorized to take the disciplinary action makes its final decision about the disciplinary action, regardless of the possibility of any later court proceedings or other proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the person, group, or arbitrator that is authorized to take disciplinary action.

(b) Notwithstanding contrary provisions in these rules, a photograph of a current or former employee may be displayed to a prospective witness as part of an investigation of any complaint or charge against the employee.

(c) Notwithstanding contrary provisions in these rules, if an appointed officer resigns or is terminated from employment while the complaint or charge is pending, all information relating to the complaint or charge is public, unless access to the information would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "appointed officer" means the clerk of the appellate courts, the state court administrator, a judicial district administrator, and a court administrator of district court.

(d) Records under subdivision 1 may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, volunteer or independent contractor, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee, volunteer, or independent contractor.

(e) Records under subdivision 1 must be disclosed to the Department of Employment and Economic Development for the purpose of administration of an unemployment benefits program under state law including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(f) Records under subdivision 1 must be disclosed to the Department of Employee Relations and the Department of Labor and Industry for the purpose of administering workers compensation programs including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.

(g) Records under subdivision 1 may be disseminated to labor organizations to the extent that the custodian determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of Minnesota Statutes, chapters 179 and 179A. Records under subdivision 1 shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the Commissioner of the Bureau of Mediation Services.

(h) If the custodian determines that the release of records under subdivision 1 is necessary to protect an employee, volunteer or independent contractor from harm to self or to protect another person who may be harmed by the employee, volunteer, or independent contractor, records that are relevant to the concerns for safety may be released to: the person who may be harmed and to that person's attorney when the records are relevant to obtaining a restraining order; to a prepetition screening team conducting an investigation under Minnesota Statutes, section 253B.07, subdivision 1; or to a court, law enforcement

agency, or prosecuting authority. If the person who may be harmed or that person's attorney receives records under this subdivision, the records may be used or released further only to the extent necessary to protect that person from harm.

Subd. 2. Personnel Related Records.

(a) *Collective Bargaining Planning Records.* Management positions on economic and noneconomic labor relations items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

(b) *Applicant Records.* Records on individuals collected because the individual is or was an applicant for employment or for voluntary service with the judicial branch, provided, however, that the following information on employment applicants is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant.

Subd. 3. Correspondence. Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

Subd. 4. Schedules and Assignments. The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released.

Subd. 5. Security Records. Records in the possession or custody of the courts that may substantially jeopardize the security of information, possessions, individuals, or property if subject to theft, tampering, improper use, illegal disclosure, trespass, or physical injury such as security plans or codes, checks and checking account numbers submitted as part of a transaction with the courts, and:

(a) *Unofficial Fiscal Notes.* Unofficial fiscal notes and related bill drafts thereof in the custody of the court provided that: (1) the request for an unofficial fiscal note is accompanied by a directive from the requester that the data be classified as not accessible to the public; and (2) the note and bill drafts have not become public through subsequent use in an introduced bill or any legislation, including amendments or a proposed bill offered by any legislator. As used in this rule, an "unofficial fiscal note" has the meaning set forth in Minnesota Statutes, section 13.64.

(b) *Audit Trail Records.* Judicial branch audit trail records that link a user with any activity performed by the user on a Judicial Branch court technology system or application (including but not limited to Minnesota Government Access, Minnesota Public Access Courthouse, Electronic File and Serve, and the Electronic Medical Records System) are not accessible to the public, except to the extent that such records, when they indicate improper use of a court technology tool, are disclosed within a final audit report. Audit trail records may also be disclosed as provided in Rule 5, subdivision 13(e) or (f), of these Rules.

Subd. 6. State Owned or Licensed Trade Secrets. Records revealing a common law trade secret or a trade secret as defined in Minnesota Statutes, section 325C.01, that is owned or licensed by the state and is maintained by a court or court administrator; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 7. Copyrighted Material. Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, a patent or copyright, or a license to use the same; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 8. Competitive Bidding Records.

(a) *Sealed Bids.* Sealed bids and responses to judicial branch bid or procurement requests or solicitations, including the number of bids or responses received, before the

opening of the bids or responses at the time specified in the judicial branch request or solicitation.

(b) *Submission of Trade Secret.* Except as provided in subparagraph (c) of this subdivision, a common law trade secret or a trade secret as defined in Minnesota Statutes, section 325C.01, that is required to be submitted a judicial branch bid or procurement request provided that:

(1) the submitting party marks the document(s) containing the trade secret "CONFIDENTIAL";

(2) the submitting party submits as part of the bid or response a written request to maintain confidentiality; and

(3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

(c) *Contract.* The existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work, shall be accessible to the public.

Subd. 9. Compliance Records. Records and reports and drafts thereof maintained by the judicial branch information systems for purposes of compliance with Minnesota Statutes, section 546.27.

Subd. 10. Library Records. Records maintained by the State Law Library which: (a) link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials; or (b) are submitted by a person applying for a borrower's card, other than the name of the person to whom a borrower's card has been issued.

Subd. 11. Passport Records. Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Services Office.

Subd. 12. Attorney Work Product. The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

Subd. 13. Judicial Branch Internal Audit Records. Information, notes, and preliminary drafts of reports relating to an audit or investigation, created, collected, and maintained by the internal auditor or audit committee of the judicial branch, or persons performing audits for the judicial branch; provided that upon the release of a final audit report by the judicial branch auditor or if the audit or investigation is no longer being pursued actively, such audit records shall be accessible to the public except as otherwise provided by applicable law or rule.

(a) *Auditor access; personnel records.* This subdivision does not limit in any way disclosures required under Minnesota Statutes, section 609.456 or 3.978, or public access to records classified as accessible to the public by Rule 5, subd. 1.

(b) *Confidential sources.* Records on an individual who supplies information for an audit or investigation, that could reasonably be used to determine the individual's identity, are not accessible to the public if the information supplied was needed for an audit or investigation and would not have been provided to the internal auditor or person performing audits without an assurance to the individual that the individual's identity would remain not accessible to the public.

(c) *Access to records by audit committee members.* Members of an audit committee have access to records that are collected or used by the judicial branch auditor and that have been classified as not accessible to the public only as authorized by resolution of the committee.

(d) *Unreleased records.* Records related to an audit but not released in a final audit report and that the judicial branch auditor reasonably believes will be used in litigation are

not accessible to the public until the litigation has been completed or is no longer being actively pursued.

(e) *Review of Records.* If, before releasing a final audit report, the judicial branch auditor provides a person with records relating to the audit for the purpose of review and verification of the records, that person shall not disclose the records to anyone else unless and until the information becomes accessible to the public under these rules.

(f) *Duties Concerning Misuse of Public Money or Other Resources.* If the judicial branch auditor's examination discloses misuse of public money or other public resources, the judicial branch auditor may disclose records relating to the examination to the attorney general to assist in the recovery of money and other resources and to the appropriate prosecuting authority to assist in the prosecution of criminal proceedings as the evidence may warrant.

Subd. 14. Other. Matters that are made inaccessible to the public under:

- (a) state statute, other than Minnesota Statutes, chapter 13; or
- (b) federal law; or
- (c) rule or order of the Supreme Court.

The state court administrator shall maintain, publish and periodically update a partial list of administrative records that are not accessible to the public.

(Amended effective July 1, 2005; amended effective July 1, 2007; amended effective March 1, 2008; amended effective July 1, 2015; amended effective October 1, 2016; amended effective January 23, 2017.)

Advisory Committee Comment - 2007

The 2005 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. Minnesota Statutes 2004, section 13.43. There are, however, some subtle differences from executive branch policy, including the fact that judicial employee discipline is governed by a separate set of procedures and access provisions. See RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch e-mail addresses are not accessible to the public unless individual employees authorize disclosure. Limiting access helps minimize the potential for ex parte contact prohibited by law. See MINN. CODE JUD. CONDUCT, CANON SECTION 3A(7).

The 2007 addition of Rule 5, subd. 2(a), is based on policy applicable to collective bargaining records held by the executive branch. Minnesota Statutes 2006, section 13.37, subdivision 1(c).

The 2005 changes to Rule 5, subs. 6, 7 and 8, reflect the existing practice. Trade secrets and copyrights are subject to state and federal law, and the specifics are generally clarified in procurement documents, from requests for bids to contracts, in the manner set forth in the rule. Once a vendor enters into a contract, the basic parameters of the contract relationship become accessible under Rule 5, subd. 1. These revisions provide notice to potential vendors of what to expect and are intended to ensure consistent results.

The 2005 changes to Rule 5, subd. 10, regarding State Law Library records provides consistent protection to information held by the library.

The 2005 addition of Rule 5, subd. 13, is based on policy applicable to executive branch audit records. See Minnesota Statutes 2004, sections 3.979 and 13.392. An internal audit function is being implemented by the judicial branch as part of the transition to state funding of district court administrative costs. The scope of the audit function is currently limited to financial audits but program audits could be added later. Subdivision 13 encompasses both types of audits.

Subd. 13 is not intended to provide a safe harbor to deny public access to records that would otherwise be accessible to the public. If an audit involves personnel records, for example, to the extent that those personnel records are accessible to the public in the hands of a supervisor or human resources office, they will continue to be accessible only from that source and would not be accessible from the auditor until a final audit report is released.

Conversely, to the extent that any personnel records are not accessible to the public from the supervisor or human resources office, the records would remain off limits to the public even after the auditor releases a final report. Subd. 13, clause (a) includes an express reference to personnel records under Rule 5, subd. 1, as audits often involve personnel records.

Implementation of the audit function includes establishment of an audit committee to provide oversight and advice to the auditor. Although the structure of that committee has not yet been finalized, subd. 13(c) assumes that such a committee would exist and would have some access to the auditor's records via formal resolutions adopted by the committee. The requirement of a resolution prevents individual audit committee members from independently obtaining access to the auditor's records and places consistent limitations on re-disclosure to the extent that audit committee members obtain such records.

A confidential source clause is included under subd. 13(b) to protect individuals who want to cooperate with an audit or investigation. Subd. 13(d) addresses unreleased records when litigation is a concern. Subd. 13(e) allows the auditor to control the distribution of draft reports or record summaries to a specified "person." This process allows for verification of facts before the release of the final audit report.

The 2005 substitution of a periodically updated list for the former Appendix C in Rule 5, subd. 14 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify administrative records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix C became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Advisory Committee Comment - 2008

The 2008 addition of subd. 13(f) is based on policy applicable to records of the legislative auditor. See Minnesota Statutes 2006, section 3.975 (legislative auditor). To the extent that misuse is uncovered as part of a personnel investigation, Rule 5, subd. 1(d), authorizes disclosure of the pertinent personnel records to law enforcement. Subd. 13(f) extends the same authority to the judicial branch auditor, who may be in a better position to report and assist law enforcement, particularly when misuse occurs in a court office that does not have the staff or technical ability to thoroughly investigate and report on the matter.

Advisory Committee Comment - 2015

Rule 5, subd. 5, is amended in 2015 to recognize that checks and checking account numbers submitted as part of a transaction with the courts contain sensitive financial information, the disclosure of which could lead to identity theft. Similar information such as credit card numbers and social security numbers are protected from public view either by statute or court rules. See Minnesota Statutes, section 480.237 (2014) (account numbers collected by the judicial branch in connection with credit cards, charge cards, debit cards or other methods of electronic funds transfer for government fees and payments ordered by the court); Minn. Gen. R. Prac. 11 (Social Security numbers and financial account numbers).

Rule 5, subd. 5, is also amended in 2015 to recognize that, as a state entity, the judicial branch participates in the creation of fiscal notes on proposed legislation. The amendment is intended to provide a uniform level of public access across all branches of government to fiscal notes and related legislative bill drafts. See Minnesota Statutes, section 13.64, subdivision 3 (2014) (governing public access to unofficial fiscal notes and related bill drafts held by executive branch agencies).

Advisory Committee Comment - 2016

Rule 5, subd. 5, is amended in 2016 to carry out the directive of the Minnesota Supreme Court to add a clause precluding public access to the audit trail logs that record system use of judicial branch computers systems. See Order Making Minnesota Judicial Branch Electronic Audit Trail Records Inaccessible to the Public, ADM10-8050 (Minn. S. Ct. filed

January 6, 2016). This is similar to the protection afforded to State Law Library patrons under Rule 5, subd. 10, of these rules. In particular, use of Minnesota Government Access by court business partners reduces significant burdens on court staff who may otherwise be required to provide paper copies of records and assist with searches at the courthouse. A few government business partners were reluctant to use MGA, however, if an audit trail record were publicly available that might tip off opposing sides as to the information and issues they have been examining as they prepare their cases. This new clause provides essentially the same reassurance that is provided to users of State Law Library materials.

Rule 6. Vital Statistics Records

Vital statistics records held by any court or court administrator shall be accessible to the public except as provided by statute. The state court administrator shall maintain, publish and periodically update a partial list of vital statistics records that are not accessible to the public.

(Amended effective July 1, 2005.)

Advisory Committee Comment - 2005

The 2005 substitution of a periodically updated list for the former Appendix D in Rule 6 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify vital statistics records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix D became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Rule 7. Procedure for Requesting Record Access or Case Record Correction.

Subdivision 1. To Whom Request is Made. A request to inspect or obtain copies of records that are accessible to the public shall be made to the custodian and may be made orally or in writing. The custodian may insist on a written request only if the complexity of the request or the volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify the data being sought, but the requesting person shall not be required to have detailed knowledge of the agency's filing system or procedures, nor shall the requesting person be required to disclose the purpose of the request.

Subd. 2. Response. The custodian shall respond to the request as promptly as practical.

Subd. 3. Delay or Denial; Explanation. If a request cannot be granted promptly, or at all, an explanation shall be given to the requesting person as soon as possible. The requesting person has the 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 shall be in writing if desired by the requesting person. Appeals are governed by Rule 9 of these rules.

Subd. 4. Referral in Certain Cases. If the custodian is uncertain of the status of a record, the custodian may ask for a status determination from the state court administrator. The state court administrator shall promptly make a determination and forward it either orally or in writing to the custodian.

Subd. 5. Correction of Case Records. An individual who believes that a case record contains clerical errors may submit a written request for correction to the court administrator of the court that maintains the record, with a copy served on all parties to the case. Such request shall be no longer than two pages in length. The court administrator shall promptly do one of the following: (a) correct a clerical error for which no court order is required; (b) forward the request to the court to be considered informally; or (c) forward the request to the party or participant who submitted the record containing the alleged clerical error who in turn may seek appropriate relief from the court. Upon forwarding under clause (b), the court may either correct the error on its own initiative or direct that the request will only be considered pursuant to a motion requesting correction. The court's directive may also

establish appropriate notice requirements for a motion. The request for correction authorized in this subdivision need not be exhausted before other relief is requested.

(Amended effective July 1, 2005.)

Advisory Committee Comment - 2005

The 2005 addition in Rule 7, subd. 3, of a cross reference to appeals under Rule 9 is added as a convenience to counterbalance the growing complexity of these rules. The 2005 deletion of the phrase "by phone or by mail" in Rule 7, subd. 4, recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

The 2005 addition of subdivision 5 regarding correction of case records is based in part on MINN. GEN. R. PRAC. 115.11 (motions to reconsider). In the context of Internet publication of court records, a streamlined process is particularly appropriate for clerical-type errors, and should allow for prompt resolution of oversights and omissions. For example, to the extent that the register of actions, court calendar, or index in a court's case management system incorrectly incorporates provisions of a court order, judgment, or pleading, such data entry inaccuracies are typically corrected without a court order by court administration staff promptly upon learning of the inaccuracy.

A party is not required to utilize the procedure set forth in subdivision 5 before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with procedures established for that purpose. Clerical errors in judgments and orders typically can be addressed by motion. See, e.g., MINN. GEN. R. PRAC. 375 (expedited child support process: clerical mistakes, typographical errors, and errors in mathematical calculations in orders ... arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties); MINN. R. CIV. P. 60.01 (civil cases: clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party after such notice, if any, the court orders); MINN. R. CRIM. P. 27.03, subds. 8, 9 (criminal cases: clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders; the court may at any time correct a sentence not authorized by law); MINN. R. JUV. PROT. P. 46.01 (juvenile protection cases: clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders; during the pendency of an appeal, such mistakes can be corrected with leave of the appellate court); MINN. R. CIV. APP. P. 110.05 (differences as to whether the transcript or other parts of the record on appeal truly disclose what occurred in the trial court are to be submitted to and determined by the trial court; material omissions or misstatements may be resolved by the trial court, stipulation of the parties, or by the appellate court on motion by a party or on its own initiative).

Alleged inaccuracies in the records submitted by the parties and other participants in the litigation must also be brought to the attention of the court through existing procedures for introducing and challenging evidence. These procedures typically have deadlines associated with the progress of the case and failure to act in a timely fashion may preclude relief.

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

Subdivision 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would: result in disclosure of information to which access is not permitted; provide remote or bulk access

that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

(a) *Definitions.*

(1) "Register of actions" means a register or list of the title, origination, activities, proceedings and filings in each case [Minnesota Statutes, section 485.07, clause (1)];

(2) "Calendars" means lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [Minnesota Statutes, section 485.11];

(3) "Indexes" means alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [Minnesota Statutes, section 485.08];

(4) "Judgment docket" means an alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [Minnesota Statutes, section 485.07(3)];

(5) "Remote access" and "remotely accessible" mean that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected, or copied without the need to physically visit a court facility. This access shall not be considered remote access for purposes of these rules.

(6) "Appellate court record" means the case records of the Minnesota Court of Appeals and the Minnesota Supreme Court, including without limitation opinions, orders, judgments, notices, motions, and briefs.

(b) *Certain Data Not To Be Remotely Disclosed.* Notwithstanding Rule 8, subd. 2 (c), (e), (f), and (g) for case records other than appellate court records, the public shall not have remote access to the following data fields in the register of actions, calendars, index, and judgment docket, with regard to parties or their family members, jurors, witnesses (other than expert witnesses), or victims of a criminal or delinquent act:

(1) social security numbers and employer identification numbers;

(2) street addresses except that street addresses of parties may be made available by access agreement in a form prepared by the state court administrator and approved by the Judicial Council;

(3) telephone numbers;

(4) financial account numbers; and

(5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that court personnel preparing judgments, orders, appellate opinions, and notices limit the disclosure of items (2), (3), and (5) above to what is necessary and relevant for the purposes of the document. Under MINN. GEN. R. PRAC. 11, inclusion of items (1) and (4) in judgments, orders, appellate opinions, and notices is to be made using the confidential information form 11.1. Disclosure of juror information is also subject to MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd 2, and MINN. R. CIV. P. 47.01.

(c) *Pending Criminal Records.* The Information Technology Division of State Court Administration shall make reasonable efforts and expend reasonable and proportionate resources to prevent records of pending criminal matters from being electronically searched by defendant name by the majority of known, mainstream electronic search tools, including but not limited to the court's own electronic search tools. "Records of pending criminal matters" are records, other than appellate court records, for which there is no conviction as defined in Minnesota Statutes, section 609.02, subdivision 5 (2014), on any of the charges.

(d) *District Court Case Types With No Remote Access.* There shall be no remote access to publicly accessible district court case records in the following cast types:

(1) Domestic abuse (proceedings for orders for protection under Minnesota Statutes, section 518B.01);

(2) Harassment (proceedings for harassment restraining orders under Minnesota Statutes, section 609.748);

(3) Delinquency felony (felony-level juvenile delinquency proceedings involving a juvenile at least 16 years old under Minn. R. Juv. Del. P.);

(4) CHIPS, CHIPS-Permanency; CHIPS-Runaway; CHIPS-Truancy; CHIPS-Voluntary Placement; and Child in Voluntary Foster Care for Treatment (encompasses publicly accessible records of all child protection proceedings under the Minn. R. Juv. Prot. P.).

(e) *District Court Case Types With No Remote Access to Documents.* To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, and judgments dockets, but excluding any other documents in the following case types:

(1) All Commitment case types (encompasses all proceedings under Minn. Spec. R. COMMITMENT & TREATMENT ACT).

(f) *District Court Case Types With No Remote Access to Party/Participant-Submitted Documents.* To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, judgment dockets, judgments, orders, appellate opinions, and notices prepared by the court, but excluding any other documents, in the following case types:

(1) Custody, Dissolution With Child, Dissolution Without Children, Other Family, and Support (encompasses all family case types);

(2) Post-Adjudication Paternity Proceedings.

(g) *District Court Case Types with Remote Access to Documents.* To the extent that the custodian has the resources and technical capacity to do so, the custodian shall provide remote access to the publicly accessible portions of the district court register of actions, calendars, indexes, judgments dockets, judgments, orders, appellate opinions, notices prepared by the court, and any other documents, in the following case types:

(1) All Major and Minor Civil Case Types (Torrens, Tort, Consumer Credit, Contract, Employment, Forfeiture, Condemnation, Civil Other/Miscellaneous, Other Major Civil, Personal Injury, Conciliation, Implied Consent, Minor Civil Judgments, and Unlawful Detainer);

(2) Formal Probate, Other Probate, Guardianship and Conservatorship, and Trust;

(3) All Major and Minor Criminal Cast Types; and

(4) All electronic case records that are accessible to the public under Rule 4 and that have been in existence for more than 90 years.

(h) *Remote Access to Appellate Court Records.* The Clerk of the Appellate Courts will provide remote access to publicly accessible appellate court records filed on or after July 1, 2015, except:

- (1) The record on appeal as defined in Minn. R. Civ. App. P. 110.01;
- (2) Data elements listed in clause (b)(1) - (5) of this rule contained in the appellate court records case management system (currently known as "PMACS");
- (3) Appellate briefs, provided that the State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices or addenda to briefs, data listed in clause (b)(1) - (5) of this rule, and other records that are not accessible to the public.

To the extent that the Clerk of the Appellate Courts has the resources and technical capacity to do so, the Clerk of the Appellate Courts may provide remote access to appellate records filed between January 1, 2013 and June 30, 2015, and shall, along with the State Law Library, provide remote access to an archive of current and historical appellate opinions dating back as far as resources and technology permit. Public appellate records for which remote access is not available may be accessible at public terminals in the State Law Library or at any district courthouse.

(i) *Exceptions.*

(1) *Particular Case.* After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (b) through (h) of this rule.

(2) *E-mail and Other Means of Transmission.* Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or other means of transmission to publicly accessible records that would not otherwise be remotely accessible under parts (b) through (h) of this rule.

(3) *E-filed Records.* Documents electronically filed or served using the E-Filing System designated by the state court administrator shall be remotely accessible to the person filing or serving them and the recipient of them, on the E-Filing System for the period designated by the court, and on the court's case management system to the extent technically feasible.

Subd. 3. Bulk Distribution of Court Records. A custodian shall, to the extent that the custodian has the resources and technical capacity to do so, provide bulk distribution of its publicly accessible electronic case records as follows:

(a) Records subject to remote access limitations in Rule 8, subd. 2, shall not be provided in bulk to any individual or entity except as authorized by order or directive of the Supreme Court or its designee.

(b) All other electronic case records that are remotely accessible to the public under Rule 8, subd. 2 shall be provided to any individual or entity that executes an access agreement in a form approved by the state court administrator that includes provisions that: (1) mandate periodic updating of the recipient's data no less often than the state court administrator's office updates its bulk records; (2) explain that records are valid only as of a certain date; and (3) address compliance, verification of records, and indemnification of the court.

(c) An individual or entity that does not execute the agreement required under clause (b) of this rule may receive electronic case records that include a case number as the only identifier.

(d) The state court administrator may also permit the release of bulk records without periodic updating provided that the recipient: (1) is an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or a representative of the news media; and (2) executes an agreement in a form approved by the state court administrator including provisions that limit use of the data.

Subd. 4. Criminal Justice and Other Government Agencies. Notwithstanding other rules, access to non-publicly accessible records and remote and bulk access to publicly accessible records by criminal justice and other government agencies shall be governed by order or directive of the Supreme Court or its designees.

Subd. 5. Access to Certain Evidence.

(a) General. Except for medical records under part (b) or this rule, or where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.

(b) Medical Record Exhibits. Medical records under Rule 4, subd. 1(f), of these rules that are admitted into evidence in a commitment proceeding that is open to the public shall be available for public inspection only as ordered by the presiding judge.

(c) No Remote Access to Trial or Hearing Exhibits. Evidentiary exhibits from a hearing or trial shall not be remotely accessible, but this shall not preclude remote access to full or partial versions of such records that are or were otherwise submitted to the court as a publicly accessible record.

Subd. 6. Fees. When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted. (Amended effective July 1, 2005, except as provided in Rule 8, subdivision 2, paragraph (f), regarding remote access; amended effective July 1, 2007; amended effective March 1 2008; amended effective September 1, 2012; amended effective July 1, 2015; amended effective October 1, 2016.)

Advisory Committee Comment - 2005

The 2005 addition of a new Rule 8, subd. 2, on remote access establishes a distinction between public access at a court facility and remote access over the Internet. Subdivision 2 attempts to take a measured step into Internet access that provides the best chance of successful implementation given current technology and competing interests at stake. The rule limits Internet access to records that are created by the courts as this is the only practical method of ensuring that necessary redaction will occur. Redaction is necessary to prevent Internet access to clear identity theft risks such as social security numbers and financial account numbers. The rule recognizes a privacy concern with respect to remote access to telephone and street addresses, or the identities of witnesses or jurors or crime victims. The identity of victims of a criminal or delinquent act are already accorded confidentiality in certain contexts [Minnesota Statutes 2004, section 609.3471 (victims of criminal sexual conduct)], and the difficulty of distinguishing such contexts from all others even in a data warehouse environment may establish practical barriers to Internet access.

Internet access to preconviction criminal records may have significant social and racial implications, and the requirements of Rule 8, subd. 2(c) are intended to minimize the potential impact on persons of color who may be disproportionately represented in criminal cases, including dismissals. The rule contemplates the use of log-ins and other technology that require human interaction to prevent automated information harvesting by software programs. One such technology is referred to as a "Turing test" named after British mathematician Alan Turing. The "test" consists of a small distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Presently, software programs do not read clearly enough to identify such pictures. The rule

contemplates that the courts will commit resources to staying ahead of technology developments and implementing necessary new barriers to data harvesting off the courts' web site, where feasible.

Some district courts currently allow public access to records of other courts within their district through any public access terminal located at a court facility in that district. The definition of "remote access" has been drafted to accommodate this practice. The scope of the definition allows statewide access to the records in Rule 8, subd. 2, from any single courthouse terminal in the state, which is the current design of the new district court computer system referred to as MNCIS.

The exception in Rule 8, subd. 2(e), for allowing remote access to additional documents, is intended for individual cases when Internet access to documents will significantly reduce the administrative burdens associated with responding to multiple or voluminous access requests. Examples include high-volume or high-profile cases. The exception is intended to apply to a specific case and does not authorize a standing order that would otherwise swallow the rule.

The 2005 addition of a new Rule 8, subd. 3, on bulk distribution, complements the remote access established under the preceding subdivision. Courts have been providing this type of bulk data to the public for the past ten years, although distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the public. The bulk data accessible to the public would, however, include preconviction criminal records as long as the individual or entity requesting the data enters into an agreement in the form approved by the state court administrator that provides that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data.

The 2005 addition of new Rule 8, subd. 4(a), regarding criminal justice and other governmental agencies, recognizes that the courts are required to report certain information to other agencies and that the courts are participating in integration efforts (e.g., CriMNet) with other agencies. The access is provided remotely or via regular (e.g., nightly or even annually) bulk data exchanges. The provisions on remote and bulk record access are not intended to affect these interagency disclosures. Additional discretionary disclosures are authorized under subd. 4(b).

The 2005 changes to Rule 8, subd. 5, regarding access to certain evidence, are intended to address the situation in which the provisions appear to completely cut off public access to a particular document or parts of it even when the item is formally admitted into evidence (i.e., marked as an exhibit and the record indicates that its admission was approved by the court) in a publicly accessible court proceeding. See, e.g., Minnesota Statutes 2004, section 518.146 (prohibiting public access to, among other things, tax returns submitted in dissolution cases). The process for formally admitting evidence provides an opportunity to address privacy interests affected by an evidentiary item. Formal admission into evidence has been the standard for determining when most court services records become accessible to the public under Rule 4, subd. 1(b), and this should apply across the board to documents that are admitted into evidence.

The changes also recognize that evidentiary items may be subject to protective orders or retention schedules or other orders. As indicated in Rule 4, subd. 2, and its accompanying advisory committee comment, the procedures for obtaining a protective order are addressed in other rules. Similarly, as indicated in Rule 1, the disposition, retention and return of records and objects is addressed elsewhere.

Advisory Committee Comment - 2007

The 2007 modifications to Rule 8, subd. 2(b), recognize the feasibility of controlling remote access to identifiers in data fields and the impracticability of controlling them in text fields such as documents. Data fields in court computer systems are designed to isolate specific data elements such as social security numbers, addresses, and names of victims. Access to these isolated elements can be systematically controlled by proper computer

programming. Identifiers that appear in text fields in documents are more difficult to isolate. In addition, certain documents completed by court personnel occasionally require the insertion of names, addresses and/or telephone numbers of parties, victims, witnesses or jurors. Examples include but are not limited to appellate opinions where victim or witness names may be necessary for purposes of clarity or comprehensibility, "no-contact" orders that require identification of victims or locations for purposes of enforceability, orders directing seizure of property, and various notices issued by the court.

The use of the term "recommends" intentionally makes the last sentence of the rule hortatory in nature, and is designed to avoid creating a basis for appeals. The reference to other applicable laws and rules recognizes that there are particular provisions that may control the disclosure of certain information in certain documents. For example, the disclosure of restricted identifiers (which includes social security numbers, employer identification numbers, and financial account numbers) on judgments, orders, decisions, and notices is governed by MINN. GEN. R. PRAC. 11. Rules governing juror-related records include MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

The 2007 modifications to Rule 8, subd. 2,(c) recognize that criminal cases often involve a conviction on less than all counts charged, and that appellate records that have long been remotely accessible have included pretrial and preconviction appeals. The clarification regarding automated tools recognizes that the participant index on the court's case management system is included in the scope of the limits on remote searching of preconviction records.

The 2007 modification to Rule 8, subd. 2(d), authorizes the state court administrator to designate additional locations as court facilities for purposes of remote access. For example, a government service center, registrar of titles office or similar location that is not in the same building as the court's offices could be designated as a location where the public could have access to court records without the limitations on remote access. In some counties, these types of offices are located in the courthouse and in other counties they are in a separate building. This change allows such offices to provide the same level of access to court records regardless of where they are located.

The 2007 addition of Rule 8, subd. 2(e)(3), is intended to reinstate the routine disclosure, by facsimile transmission or e-mail, of criminal complaints, pleadings, orders, disposition bulletins, and other documents to the general public. These disclosures were unintentionally cut off by the definition of remote access under Rule 8, subd. 2(d), which technically includes facsimile and e-mail transmissions. Limiting disclosures to the discretion of the court administrator relies on the common sense of court staff to ensure that this exception does not swallow the limits on remote and bulk data access. The rule also recognizes that copy fees may apply. Some but not all courts are able to process electronic (i.e., credit card) fee payments.

Access Rule 8, subd. 4(b), authorizes disclosure of certain records to executive branch entities pursuant to a nondisclosure agreement. Minnesota Statutes 2006, section 13.03, subdivision 4, paragraph (a), provides a basis for an executive branch entity to comply with the nondisclosure requirements. It is recommended that this basis be expressly recognized in the nondisclosure agreement and that the agreement limit the executive branch agency's use of the nonpublicly accessible court records to that necessary to carry out its duties as required by law in connection with any civil, criminal, administrative, or arbitral proceeding in any federal or state court, or local court or agency or before any self-regulated body.

Advisory Committee Comment - 2008

The 2008 modifications to Rule 8, subd. 2(a), recognize that privacy concerns in regard to remote access, such as identity theft, subside over time while the historical value of certain records may increase. The rule permits remote access to otherwise publicly accessible records as long as the records have been in existence for 90 years or more. This provision is based in part on the executive branch data practices policy of allowing broader access to records that are approximately a lifetime in age. See Minnesota Statutes 2006, section

13.10, subdivision 2 (private and confidential data on decedents becomes public when ten years have elapsed from the actual or presumed death of the individual and 30 years have elapsed from the creation of the data; "an individual is presumed to be dead if either 90 years elapsed since the creation of the data or 90 years have elapsed since the individual's birth, whichever is earlier, except that an individual is not presumed to be dead if readily available data indicate that the individual is still living").

The 2008 modifications to Rule 8, subs. 2(c) and 3, recognize that certain juvenile court records are accessible to the public and that the remote access policy for preconviction criminal records needs to be consistently applied in the juvenile context. There are both adjudications and convictions in the juvenile process. Delinquency adjudications are governed by Minn. R. Juv. Del. P. 15.05, subd. 1(A), and Minnesota Statutes 2007 Supplement, section 260B.198, subdivision 1; traffic offender adjudications are governed by Minn. R. Juv. Del. P. 17.09, subd. 2(B), and Minnesota Statutes 2006, section 260B.225, subdivision 9; and extended jurisdiction juvenile convictions are governed by Minn. R. Juv. Del. P. 19.10, subd. 1(A), and Minnesota Statutes 2006, section 260B.130, subdivision 4. Juvenile records that are otherwise publicly accessible but have not reached the appropriate adjudication or conviction are not remotely accessible under Rule 8, subs. 2(c) and 3.

Advisory Committee Comment - 2012 Amendment

The 2012 addition of Rule 8, subd. 2(e)(4), is intended to recognize that documents electronically filed with the courts or electronically served using the court's internet-accessible electronic filing and electronic service system can be made remotely accessible to the parties filing or serving the same and to the recipients of such service. This continues remote access that was established through the Judicial District E-Filing Pilot Project Provisions, adopted by the court on October 21, 2010, and amended on March 10, 2011. Those provisions are being replaced by permanent rules.

Advisory Committee Comment - 2015

Rule 8, subd. 2, is amended in 2015 to allow for expanded remote public access to certain court records. Subdivision 2(a) has become a definition section. Subdivision 2(b) continues existing limits on remote access to certain data elements contained in the district court case management system.

Rule 8, subd. 2(c), is amended to replace "preconviction" with "pending" as the latter is more consistent with the presumption of innocence. No substantive change is being made in this rule in regard to pending criminal matters. References in the rule to juvenile delinquency proceedings have been removed as they are no longer necessary in light of the Court's May 14, 2014, order amending Minn. R. Juv. Del. P. 30.02 to preclude all remote public access to delinquency cases involving felony level conduct by a juvenile at least 16 years old.

Rule 8, subd. 2(d) - (g), establishes a tiered approach to remote public access to district court records. Case types with no remote access are listed in clause (d), which merely continues existing practice for these case types. Proceedings for orders for protection and harassment restraining orders are already maintained with no remote access as required by the federal Violence Against Women Act, 18 U.S.C.A. section 2265(d)(3). Felony-level juvenile delinquency proceedings involving a juvenile at least 16 years old are also already maintained with no remote access under Minn. R. Juv. Del. P. 30.02. All proceedings governed by Minn. R. Juv. Prot. P. are also currently maintained with no remote or courthouse electronic access, although publicly accessible records will not be accessible at a courthouse terminal.

Rule 8, subd. 2(e), continues the existing level of remote access, which currently includes no documents, for all proceedings under Minn. Spec. R. COMMITMENT & TREATMENT ACT. This approach is consistent with the commendation of the Court's advisory committee on those commitment rules, and attempts to maintain current level of remote public access (register of actions, name index, and calendars) but not create additional undue hardship for litigants in such cases by making the detailed documents remotely accessible. Medical records in commitment matters also receive additional protections in Rule 8, subd. 5.

Rule 8, subd. 2(f), provides for remote public access to court-generated documents, along with the register of actions, index, calendars, and judgment docket, for all family law case types and post-adjudication paternity matters. There is no remote access to documents submitted by parties or participants. This means, for example, that there is no remote access in dissolution and child support matters to affidavits, which may contain highly sensitive information or, in some cases, unfounded allegations. Affidavits can be accessed at the courthouse to the extent that they are publicly accessible.

Rule 8, subd. 2(g), provides remote access to all publicly accessible documents in all major and minor civil and criminal cases, and all probate matters. It also continues the existing provision in these rules regarding remote access in all case types to publicly accessible case records that have been in existence for at least 90 years.

Rule 8, subd. 2(h), attempt to clarify remote access to appellate court records. The appellate courts are able to implement remote access to party-submitted documents on a day forward basis as the appellate court case management system and case types are different than those of the district court. The exceptions to remote access are consistent with those for district court records and recognize that district court records make their way into the appellate record.

Rule 8, subd. 3, as amended in 2015, retains consistent treatment for bulk and remote access. Inconsistent treatment would allow one to defeat the purpose of the other.

Rule 8, subd. 4, is amended in 2015 to recognize that the judicial branch has developed access policies to address systemic, computerized access by various government agencies. Such policy development properly belongs outside the public access rules.

Rule 8, subd. 5, is amended in 2015 to establish an exception to public access for medical records admitted into evidence in commitment proceedings. These records tend to be voluminous and redaction on an individual basis is impractical. The Supreme Court Advisory Committee on Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act felt strongly about this approach and that committee has also codified this approach in its recommended changes to the commitment rules. A number of district courts also have standing orders accomplishing the same result. This rule change would obviate the need for such standing orders.

Rule 8, subd. 5, is also amended to clarify that trial exhibits are not remotely accessible. Many exhibits because of their physical nature cannot be digitized, and therefore would not be remotely accessible. This clarification attempts to provide consistency for remote public access treatment of exhibits.

Advisory Committee Comment - 2016

Rule 8, subd. 2(h), is amended in 2016 to clarify that the appellate opinion archive currently maintained by the State Law Library must continue to be made remotely accessible to the public. In addition access to the appellate court case management system currently known as PMACS is now available at public access terminals in any courthouse in the state.

Rule 8, subd. 3, is amended in 2016 to establish a subscription approach for commercial recipients of bulk court records. The approach contemplates a subscriber agreement that would detail requirements for installing a completely refreshed database on no less than the same time frame (currently a weekly basis) that the state court administrator's office updates its bulk records, explain that the records are valid as of a certain date, and explain what compliance, verification and indemnification risks the recipient must bear. Underlying this approach is a menu of common bulk data extracts that would be made available on this subscription basis. Commercial users have requested a subscription approach, and many are already required to comply with various state and federal laws that address accuracy and verification of records, provide redress procedures, and permit enforcement from entities including the Federal Trade Commission, the Consumer Financial Protection Bureau, and state attorney generals. See, e.g., 15 U.S.C., section 1681 et seq. (Fair Credit Reporting Act); Minnesota Statutes, section 332.70 (Business Screening Services); Minnesota Statutes, section 13C.001 et seq. (Access to Consumer Reports Prepared by Consumer

Reporting Agencies); 18 U.S.C., section 2721 (Drivers Privacy Protection Act); and Minnesota Statutes, sections 504B.235 to 504B.245 (tenant screening agencies).

Alternatives for commercial entities that do not or cannot support a subscription approach include obtaining various records through common reports that are automatically emailed out from the trial court case management system. Examples include the Disposition Bulletin, which contains criminal dispositions, and the civil judgment abstract report, which includes judgment information. These reports have the added data element of party street addresses which would otherwise be a data element that is not remotely accessible and therefore not accessible in bulk format under Rule 8, subd. 2(b)(2), unless the recipient enters into a user agreement approved by the state court administrator. The advisory committee intends that a subscription agreement permitted under new Rule 8, subd. 3(b) would meet this requirement and that street addresses could be included in the bulk data extracts available under a subscription approach. This may make the disposition bulletin and judgment abstract report less popular for commercial entities who can afford to follow the subscription approach.

The option in Rule 8, subd. 3(c), for bulk data without individual identifiers is most likely to be attractive to researchers who are just interested in aggregate data analysis. The exception in Rule 8, subd. 3(d) for academia and the media is based on the long standing practice of the judicial branch to waive commercial fees for researchers and the media who will limit their use to research or to preparing their news stories. This approach contemplates a fee waiver agreement that would explain that the records are valid as of a certain date, and explain what use and verification requirements and risks the recipient must bear.

Rule 9. Appeal from Denial of Access

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the state court administrator. The state court administrator shall promptly make a determination and forward it in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

(Amended effective July 1, 2005.)

Advisory Committee Comment - 2005

The 2005 deletion of the phrase "by mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

Rule 10. Contracting with Vendors for Information Technology Services.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

(Added effective July 1, 2005.)

Advisory Committee Comment - 2005

The 2005 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent contractors are used to perform information technology related services for the courts. Where the service involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities

under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are inaccessible to the public under these rules; (c) specify the uses the vendor may make of the court records; (d) require the vendor to take all reasonable steps to ensure the confidentiality of the court records that are not accessible to the public, including advising all vendor employees who are permitted access to the records of the limitations on use and disclosure; (e) require the vendor, other than a state agency, to indemnify and hold the court or court administrator and its agents harmless from all violations of the contract; (f) provide the court or court administrator with an explicit right to injunctive relief without the necessity of showing actual harm for any violation or threatened violation of the contract; (g) be governed by Minnesota law, without giving effect to Minnesota's choice of law provisions; (h) include the consent of the vendor to the personal jurisdiction of the state and federal courts within Minnesota; and (i) requires all disputes to be venued in a state or federal court situated within the state of Minnesota.

Rule 11. Immunity.

Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for conduct relating to the custodian's duties of providing access under these rules.

(Added effective July 1, 2005.)

Advisory Committee Comment - 2005

The 2005 addition of Rule 11 is intended to allow record custodians to promptly and effectively discharge their obligations under these rules without undue concern over liability for inadvertent errors. The burden of redacting each and every reference to specific pieces of information from voluminous records is a daunting task, and the threat of liability could turn even the more routine, daily access requests into lengthy processes involving nondisclosure/indemnity agreements. The court has established immunity for records custodians in other contexts. See, e.g., R. BD. JUD. STDS. 3 (members of the Board on Judicial Standards are absolutely immune from suit for all conduct in the course of their official duties); R. LAWYERS PROF. RESP. 21(b) (Lawyers Professional Responsibility Board members, other panel members, District Committee members, the Director, and the Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN. R. ADMISSION TO THE BAR 12.A. (the Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its staff are absolutely immune from civil liability for all acts in the course of their official capacity). Rule 11 does not, however, avoid an administrative appeal of a denial of access under Rule 9, declaratory judgment, writ of mandamus, or other similar relief that may otherwise be available for a violation of these rules.

APPENDIX A

Boards and Commissions that are governed by independent rules promulgated by the Supreme Court include, but are not limited to, the following:

- Lawyers Professional Responsibility Board
- Lawyer Trust Account Board
- Client Security Fund Board
- State Board of Legal Certification
- Board of Continuing Education
- State Board of Law Examiners

State Bar Advisory Council
Board on Judicial Standards
Standing Committee on No Fault Arbitration
Legal Services Advisory Committee

APPENDIX B

[Repealed July 1, 2005.]

APPENDIX C

[Repealed July 1, 2005.]

APPENDIX D

[Repealed July 1, 2005.]

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