

STATE OF MINNESOTA
IN SUPREME COURT
C4-85-1848

In the Matter of Adoption of
Rules Governing Access to
Records of the Judiciary

ORDER

The Supreme Court Advisory Committee on Rules Governing Access to Records of the Judiciary having filed its report and proposed rules to replace the interim rules, a public hearing thereon was held before this Court on December 16, 1987, pursuant to due notice.

The Court being advised in the matter,

IT IS ORDERED:

1. The rules attached hereto, entitled "Rules of Public Access to Records of the Judicial Branch," are hereby adopted, to be effective July 1, 1988. These rules replace the prior interim rules, which no longer will be in effect.
2. The Advisory Committee also considered procedures for restricting access to case records but reached no consensus. (See report, pp. 10 through 17.) This portion of the report is referred to the Supreme Court Advisory Committee on Rules of Civil Procedure for study and report back to the Court on whether procedures for restricting access to case records should be incorporated in a rule, and, if so, what that rule should be, and where should it be placed (i.e., separate rules in the Minnesota Rules of Civil Procedure and in the Minnesota Rules of Criminal Procedure, or in one rule appearing in the Rules of Public Access to Records of the Judicial Branch). The advice of the Advisory Committee on Criminal Procedure on rule placement is also requested. Further, the

Advisory Committee on Rules of Civil Procedure is requested to review and report to the Court on those rules of civil procedure concerning commencement of actions and filing of suit papers.

3. The Advisory Committee on Rules Governing Access to Records of the Judiciary shall continue in existence awaiting reports from the other advisory committees. We refer to the Committee for study the question of access by individuals to their own data.

Dated: FEB 1, 1988



Douglas K. Amdahl
Chief Justice

OFFICE OF
APPELLATE COURTS

FEB 1 1988

FILED

RULES OF PUBLIC ACCESS
TO RECORDS OF THE JUDICIAL BRANCH

Rule 1. Scope of Rules.

These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. They do not govern access to records of the Tax Court or the Workers' Compensation Court of Appeals, which are part of the executive branch of the state. In addition, these rules do not govern access to 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, subdivision 1(b) with respect to case records, these rules do not govern access to records of court services departments or probation authorities. Access to these records is governed by other applicable court rules and statutes, including Minnesota Statutes, section 13.84 and its successor.

Nothing in these rules shall affect the disposition of records pursuant to Minnesota Statutes, section 138.17 or its successor or prevent the return of documents or physical objects to any person or party pursuant to a court rule or order.

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 office having custody 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, and 6.

Rule 3. Definitions.

Subd. 1. Custodian. The custodian is the person responsible for the safekeeping of any records held by any court or court administrator's or clerk of court's office. In the absence of the person usually responsible, the person who is temporarily responsible for the records is the custodian.

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

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District, Juvenile, Family, Conciliation, County and

Probate 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 offices of judicial district administrator, court administrators of the respective counties, and state-wide court administrative agencies.

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.

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. All case records are accessible to the public except the following:

- (a) **Domestic Abuse Records.** Records maintained by a court administrator pursuant to the domestic abuse act, Minnesota Statutes, section 518B.01, until a temporary court order made pursuant to subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;
- (b) **Court Services Records.** Records on individuals maintained by a court, other than records that have been admitted into evidence, that are gathered at the request of a court:
 - (1) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts,

- (2) to assist in assigning an appropriate sentence or other disposition in a case,
- (3) to provide the court with a recommendation regarding the custody of minor children, and
- (4) to provide the court with a psychological evaluation of an individual.

Provided, however, that 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 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, 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 pursuant to Minnesota Statutes, sections 546.24-.25.
- (d) Criminal Cases; Juvenile Cases. Case records that are made inaccessible to the public pursuant to the rules of criminal procedure or the rules of procedure for the juvenile courts. Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the written opinion resulting from the appeal, are inaccessible to the public unless otherwise provided by rule or order of the appellate court.
- (e) Records Controlled by Statute. Case records that are made inaccessible to the public pursuant to state statutes, other than Minnesota Statutes, chapter 13. A partial list is set forth in Appendix B.
- (f) Civil Cases. Case records made inaccessible to the public by protective or other order of the court.

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the rules of civil and criminal procedure.

Committee Note

The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, 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 Rule 26.03, Rules of Civil Procedure and Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197 (Minn. 1986).

Rule 5. Accessibility to Administrative Records.

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

Subd. 1. Employee 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; 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; 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 city and county of residence;

Subd. 2. Applicant Records. Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information 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 that would be likely to substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury such as security plans or codes;

Subd. 6. State Owned Trade Secrets. Records revealing a common law trade secret or a trade secret as defined in M.S.A. 325C.01 that is the property of the state and is maintained by a court or court administrator.

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;

Subd. 8. Competitive Bidding Records.

- (a) **Sealed Bids.** Sealed bids, including the number of bids received, shall be inaccessible to the public prior to the opening of the bids at the time specified in the judicial branch bid request.
- (b) **Submission of Trade Secret.** A common law trade secret or a trade secret as defined in Minn. Stat. 325C.01, that is required to be submitted pursuant to a judicial branch bid request, shall be inaccessible to the public provided that:
 - (1) the bidder marks the document(s) containing the trade secret "CONFIDENTIAL;"
 - (2) the bidder submits as part of the bid 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.

Subd. 9. Compliance Records. Records and reports and drafts thereof maintained by the State Judicial Information

Systems and the Trial Court Information Systems for purposes of compliance with Minnesota Statutes, section 546.27;

Subd. 10. Library Records. Records maintained by the state law library which 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;

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 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. Other. Matters that are made inaccessible to the public pursuant to:

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

A partial list is set forth in Appendix C.

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. A partial list is set forth in Appendix D.

Rule 7. Procedure for Requesting Access.

Subd. 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.

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

Rule 8. Inspection and Photocopying.

Subd. 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, if access to the original records would result in disclosure of information to which access is not permitted, jeopardize the security of the records, or prove otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Access to Certain Evidence. Physical objects admitted into evidence shall be available for public inspection under such condition as the court administrator may deem appropriate to protect the security of the evidence.

Subd. 3. Fees. When copies are requested, the custodian may charge the copy fee established pursuant to 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.

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 office of the state court administrator. The state court administrator shall promptly make a determination and forward it by mail to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

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

Statutes making certain case records inaccessible to the public include, but are not limited to, the following:

| Minnesota Statute | Type of Record or Proceeding |
|-----------------------------|--|
| 144.343, subd. 6 | Abortion notification proceedings |
| 144.218, subd. 2; 259.27; | Adoption proceedings |
| 259.31; 259.49; 260.161 | |
| 257.56 | Artificial insemination |
| 253B.23, subd. 9 | Commitments |
| 254.09 | Compulsory treatment |
| 626A.06, subd. 9 | Wiretap warrants |
| 609.3471 | Identity of juvenile victims of sexual assault |
| 609.115 | Presentence investigation report |
| 169.126 | Alcohol problem assessment report |
| 638.02 | Pardon |
| 242.31; 152.18 subds. 1,2,3 | Expunged records |
| 518.168(d) | Custody proceedings |
| 260.161 | Juvenile court records |
| 257.70 | Paternity proceedings |
| 525.22 | Wills deposited for safekeeping |

APPENDIX C

State and federal laws making certain administrative records inaccessible to the public include, but are not limited to, the following:

| Citation* | Type of Record |
|--------------------------------------|--|
| M.S. §§ 593.42, subd. 5; 593.47 | Jury data |
| 22 C.F.R. § 51.33 | Passport records |
| M.S. § 260.195, subd. 6 | Juvenile placements |
| M.S. §§ 626A.06, subd. 9; 626A.17 | Report of wiretap warrants |
| Rule 9, R. Reg. Attorneys | Registered Attorneys Mailing List |
| Rule 5, R. Jud. Ed. | Supreme Court Continuing Education Office records |

*M.S. denotes Minnesota Statutes; C.F.R. denotes the Code of Federal Regulations; R. Reg. Attorneys denotes Rules of the Supreme Court for Registration of Attorneys, amended by Supreme Court Order dated Feb. 13, 1986; R. Jud. Ed. denotes Rules of the Supreme Court for Judicial Education of Members of the Judiciary, promulgated pursuant to Supreme Court Order dated Oct. 11, 1979.

APPENDIX D

The following statutes and regulations issued pursuant to statute, govern the accessibility of vital statistics records:

| Citation* | Type of Record |
|---|---|
| M.S. §§ 144.218; 144.1761; 144.216; 257.73 | Original birth certificate prior to: adoption of child; marriage of natural parents; acknowledgement or adjudication of paternity; and filing of corrected certificate. |
| M.S. § 144.225; M.R. 4600.6000 | Birth certificates and marriage license applications disclosing child born out of wedlock |
| M.R. 4600.5800 | Birth and death certificates; commercial use. |

*M.S. denotes Minnesota Statutes; M.R. denotes Minnesota Rules, which is a compilation of rules promulgated by agencies in the executive branch.