

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

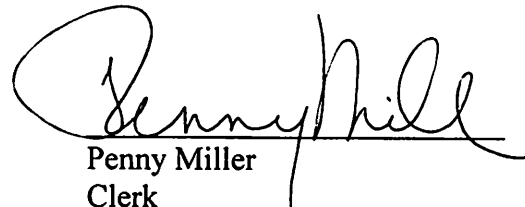
Supreme Court No. 20130410

Proposed Amendments to the North Dakota Rules of Appellate Procedure

[¶ 1] On June 24, 2014, the Court approved amendments to the Rules of Appellate Procedure. The Court considered further clarifying amendments to North Dakota Rules of Appellate Procedure 28 and 29. The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶ 2] **ORDERED**, that the amendments to North Dakota Rules of Appellate Procedure 28 and 29 are ADOPTED, effective December 1, 2014.

[¶ 3] Entered this 26th day of November, 2014, at the direction of the Supreme Court of the State of North Dakota, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices.

A handwritten signature in black ink, appearing to read "Penny Miller", is written over a horizontal line.

Penny Miller
Clerk
North Dakota Supreme Court

RULE 28. BRIEFS

(a) Form of Briefs. All briefs must comply with Rule 25 and Rule 32.

(b) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a table of contents, with ~~page~~ paragraph references;

(2) a table of authorities -- cases (alphabetically arranged), statutes, and other authorities -- with references to the ~~pages of~~ paragraphs in the brief where they are cited;

(3) in an application for the exercise of original jurisdiction, a concise statement of the grounds on which the jurisdiction of the supreme court is invoked, including citations of authorities;

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below;

(6) a statement of the facts relevant to the issues submitted for review, which identifies facts in dispute and includes appropriate references to the record (see Rule 28(f));

(7) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the

discussion of the issues); and

(C) if the appeal is from a judgment ordered under N.D.R.Civ.P. 54(b), whether the certification was appropriate; and

(8) a short conclusion stating the precise relief sought.

(c) Appellee's Brief. The appellee's brief must conform to the requirements of subdivision (b), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

(d) Reply Brief. The appellant may file a single brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with ~~page~~ paragraph references, and a table of authorities -- cases (alphabetically arranged), statutes, and other authorities -- with references to the ~~pages of~~ paragraphs in the reply brief where they are cited.

(e) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the purchaser."

(f) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed or if references are made in the briefs to parts of the record not reproduced in the appendix, the references must be to the docket number of that part of the record. A party referring to evidence for which admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(g) Reproduction of Statutes, Rules, Regulations, and Other Sources. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end of the brief.

(h) [Reserved].

(i) Briefs in a Case Involving a Cross-Appeal.

(1) An appellee and cross-appellant must file a single brief at the time the appellee's brief is due. This brief must contain the issues and argument involved in the cross-appeal as well as the answer to the appellant's brief.

(2) The appellant's answer to the cross-appeal must be included in the reply brief, but without duplication of statements, arguments, or authorities contained in the appellant's principal brief. To avoid duplication, references may be made to the appropriate portions of the appellant's principal brief.

(3) The cross-appellant may file a reply brief confined strictly to the arguments raised in the cross-appeal. This brief is due within 14 days after service of the appellant's reply brief; however, if there is less than 14 days before oral argument, the reply brief

must be filed at least 5 days before argument.

(j) Briefs In a Case Involving Multiple Parties. Any number of parties may join in a single brief or adopt by reference any part of another's brief. Parties may similarly join in reply briefs.

(k) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed -- or after oral argument but before decision -- a party may promptly advise the court by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

(l) Requirements. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant or immaterial matters.

EXPLANATORY NOTE

Rule 28 was amended, effective March 1, 1986; January 1, 1988; March 1, 1994; March 1, 1996; March 1, 2003; March 1, 2008; March 1, 2010; March 1, 2011; October 1, 2014; December 1, 2014.

Under paragraph (b)(4), each legal issue should be stated as a question of law sufficiently specific to allow the court to understand the precise issue presented. Generalized statements such as, "Is the verdict supported by the evidence?" are not sufficient.

Under subdivision (f), references may be made to the docket number of parts of the record not reproduced as in the examples following: Answer, docket No. 2, p. 7; Motion for

89 Judgment, docket No. 15, p. 2; Transcript p. 231.

90 Rule 28 was revised, effective March 1, 2003, in response to the December 1, 1998,
91 amendments to Fed.R.App.P. 28. The language and organization of the rule were changed
92 to make the rule more easily understood and to make style and terminology consistent
93 throughout the rules. Substantive changes were made to conform this rule with the changes
94 made in Rule 32.

95 Subdivision (a) was added to inform parties that all briefs must comply with Rule 32
96 and amended effective October 1, 2014, to conform the rule to electronic filing.

97 Subdivision (b):

98 Paragraphs (1) and (2) were amended, effective March 1, 2003, to separate the table
99 of contents and the table of authorities into two distinct items in a brief.

100 Paragraphs (5) and (6) were amended, effective March 1, 2003, to require two
101 separate statements -- a statement of the case (the procedural history) and a statement of the
102 facts.

103 Paragraph (7) was amended, effective March 1, 2010, to require a party to brief the
104 appropriateness of a district court's grant of a certification under N.D.R.Civ.P. 54(b).

105 Subdivision (c) was amended, effective March 1, 2003, to conform the appellee's brief
106 with the appellant's brief, and to expand the items that need not be included in the appellee's
107 brief.

108 Subdivision (h) was amended, effective March 1, 2003, to delete length limitations,
109 which have been moved to Rule 32.

110 Paragraph (i)(3) was amended, effective March 1, 2011, to change the deadline for a

cross-appellant to serve and file a reply brief if there is less than 14 days before argument from 3 to 5 days before argument.

Subdivision (k) was added, effective March 1, 2003, to provide a means for parties to inform the court of authorities that come to a party's attention after a brief has been filed or after oral argument.

Subdivision (l) was added, effective March 1, 2008, to explain requirements for briefs filed under Rule 28.

Rule 28 was amended, effective October 1, 2014, to replace “paper” with “document.”

Rules 28 was amended, effective December 1, 2014, to require references to paragraph numbers in tables of contents and tables of authorities.

SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 25; April 29-30, 2010, pages 23-24; September 24-25, 2009, pages 11-12; April 26-27, 2007, pages 29-31; September 27-28, 2001, pages 7-9; April 27-28, 1995, pages 15-17; January 26-27, 1995, pages 6-7; September 29-30, 1994, pages 13-16; January 28-29, 1993, page 11; February 19-20, 1987, page 8; September 18-19, 1986, pages 15-16; November 30, 1984, pages 32-33; October 19, 1984, pages 23-26; March 16-17, 1978, page 4; January 12-13, 1978, pages 15-18; Fed.R.App.P. 28.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 28-18-06, 28-18-09, 28-27-33, 29-23-01, 29-23-02, 29-23-03, 29-23-04, 29-23-08, and 29-23-09.

CROSS REFERENCE: N.D.R.App.P. 25 (Filing and Service), N.D.R.App.P. 30 (Appendix), N.D.R.App.P. 31 (Filing and Service of Briefs), and N.D.R.App.P. 32 (Form of

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) When Permitted. An amicus curiae brief may be filed only with leave of court or at the court's request. An amicus brief must be limited to issues raised on appeal by the parties.

(b) Motion for Leave to File. The motion may be accompanied by the proposed brief. The motion must state:

- (1) the movant's interest; and
- (2) the reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 25 and Rule 32. In addition to the requirements of Rule 25 and Rule 32, the cover must identify the party or parties supported, if any, and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

- (1) a table of contents, with ~~page~~ paragraph references;
- (2) a table of authorities -- cases (alphabetically arranged), statutes and other authorities -- with references to the ~~pages of~~ paragraphs in the brief where they are cited;
- (3) a concise statement of the identity of the amicus curiae, and its interest in the case; and
- (4) a statement that indicates whether:
 - (A) a party's counsel authored the brief in whole or in part;
 - (B) a party or a party's counsel contributed money that was intended to fund

23 preparing or submitting the brief; and

24 (C) a person -- other than the amicus curiae, its members, or its counsel --
25 contributed money that was intended to fund preparing or submitting the brief and, if so,
26 identifies each such person; and

27 (5) an argument, which may be preceded by a summary and which need not
28 include a statement of the applicable standard of review.

29 (d) Length. Except by the court's permission, an amicus brief may be no more than
30 one-half the maximum length authorized by these rules for a party's principal brief (see
31 Rule 32(a)(7)). If the court grants a party permission to file a longer brief, that extension
32 does not affect the length of an amicus brief.

33 (e) Time for Filing. An amicus curiae must file its brief within the time allowed for
34 filing the principal brief of the party being supported. An amicus curiae that does not
35 support either party must file its brief within the time allowed for filing the appellant's
36 principal brief. The court may grant leave for later filing, specifying the time within
37 which an opposing party may answer.

38 (f) Reply Brief. Except by the court's permission, an amicus curiae may not file a
39 reply brief.

40 (g) Oral Argument. An amicus curiae may participate in oral argument only with
41 the court's permission.

42 EXPLANATORY NOTE

43 Rule 29 was amended, effective March 1, 1996; March 1, 2003; March 21, 2007;
44 October 1, 2014; December 1, 2014.

45 Rule 29 was revised, effective March 1, 2003, in response to the December 1, 1998,
46 amendments to Fed.R.App.P. 29. The language and organization of the rule were changed
47 to make the rule more easily understood and to make style and terminology consistent
48 throughout the rules.

49 Subdivision (a) was amended, effective March 21, 2007. New language was added
50 to clarify that an amicus brief may deal only with issues raised on appeal by the parties.

51 Subdivision (b) was amended, effective March 1, 2003. New language in paragraph
52 (2) was added to require that the motion state the relevance of the matters asserted to the
53 disposition of the case.

54 Subdivision (c) was adopted, effective March 1, 2003, to eliminate any confusion as
55 to contents and form and to require compliance with Rule 32, and amended effective October
56 1, 2014, to conform the rule to electronic filing.

57 Subdivision (c) was amended, March 1, 2012, to include a new paragraph (c)(4)
58 establishing disclosure requirements concerning the authorship and funding of an amicus
59 brief. The disclosure requirements are derived from Fed.R.App.P. 29.

60 Subdivision (c) was amended, effective December 1, 2014, to require references to
61 paragraph numbers in the table of contents and table of authorities.

62 Subdivision (d) was adopted, effective March 1, 2003, to establish a shorter page limit
63 for an amicus brief than for a party's principal brief. The rationale for this limitation is that
64 an amicus brief is supplemental--it need not address all issues or facets of a case, but only
65 matters not adequately addressed by a party.

66 Subdivision (f) was adopted, effective March 1, 2003, to prohibit the filing of a reply

67 brief by an amicus curiae without the permission of the court.

68 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 25;
69 September 27-28, 2001, pages 19-22; September 29-30, 1994, page 16; May 25-26, 1978,
70 pages 13-14. Fed.R.App.P. 29.

71 CROSS REFERENCE: N.D.R.App.P. 32 (Form of Briefs, Appendices, and Other
72 Documents).