

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

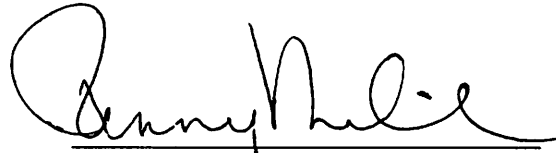
Supreme Court No. 20180012

**Proposed Amendments to North Dakota Supreme Court Administrative Rule 13
Regarding Judicial Referees - Scope of Delegable Duties**

[¶ 1] On January 8, 2018, Judge Gail Hagerty, on behalf of the judges of the South Central Judicial District, filed a petition to amend North Dakota Supreme Court Administrative Rule 13 regarding the scope of delegable duties to judicial referees. The Supreme Court posted the amendments for comments due by February 9, 2018. The proposal is 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

[¶ 3] **IT IS ORDERED**, that the amendments to North Dakota Supreme Court Administrative Rule 13 are ADOPTED, effective March 1, 2018.

[¶ 4] The Supreme Court of the State of North Dakota convened the 14th day of February, 2018, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen, Justices, directing the Clerk of the Supreme Court to enter the above order.

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

Penny Miller
Clerk
North Dakota Supreme Court

Administrative Rule 13 - JUDICIAL REFEREES

Section 1. Authority.

The 1985 Legislative Assembly provided for appointment of judicial referees under House Bill 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-30, the Supreme Court adopts the following administrative rule relating to judicial referees.

Section 2. Statement of Policy.

The North Dakota Judicial System's policy is to provide for the qualifications, the extent and assignment of authority, procedure and the conduct of the role of judicial referees within the North Dakota Judicial System in each judicial district.

Section 3. Qualifications of Judicial Referees.

Minimum qualifications for a judicial referee include:

- (a) United States citizenship;
- (b) physical residence in the judicial district of the appointment after appointment unless physical residence is waived by the presiding judge of the judicial district; and
- (c) a license to practice law in the state of North Dakota; or a juvenile supervisor/referee meeting the requirements of N.D.C.C. § 27-20-06(1)(I).

Section 4. Appointment.

The presiding judge, on behalf of all of the district court judges of the judicial district, must execute in writing the appointment of all judicial referees, to serve at the pleasure of the district court judges of the judicial district. Judicial referees must be compensated under the personnel system of the North Dakota Judicial System

Section 5. Scope of Delegable Duties.

(a) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee to preside in any individual proceeding or class of proceedings under:

- (1) N.D.C.C. ch. 12.1-31.2;
- (2) N.D.C.C. 12.1-31-01.2;
- (3) N.D.C.C. title 14, except contested divorce trials;
- (4) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29;
- (5) N.D.C.C. ch. 27-08.1;

- (6) N.D.C.C. ch. 27-20;
- (7) N.D.C.C. ch. 28-25;
- (8) N.D.C.C. § 30.1-28-10.1; and
- (9) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2); and
- (10) N.D.C.C. ch. 47-32.

(b) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee, while serving and acting as a magistrate appointed under N.D. Sup. Ct. Admin. R. 20, to preside in any individual proceeding or class of proceedings under N.D.C.C. § 39-06.1-03.

(c) A judicial referee has such other authority of a district court judge as is necessary to carry out the delegated duties, including the issuance of orders to show cause, temporary restraining orders, temporary injunctions, and the power to impose remedial sanctions for contempt of court.

(d) The order issued under Subsection (a) of this section must be reduced to writing and signed by the presiding judge of the judicial district. The order must be filed with the clerk of district court of each county of the judicial district. The presiding judge must send a copy of this document to the State Court Administrator. A copy must be made available to any party upon request.

(e) Within the limits set forth in the written order of the presiding judge, district court judges may refer individual cases or classes of cases to a judicial referee by written order.

(f) After July 1, 1987, a judicial referee who hears matters under N.D.C.C. ch. 27-20 may not exercise supervision of personnel who supervise juveniles.

Section 6. Geographical Jurisdiction.

Each judicial referee will have jurisdiction only within the judicial district of appointment and is expected to maintain an office as assigned by the presiding judge of the judicial district. A judicial referee may be appointed to temporary duty in another judicial district by the presiding judge of the judicial district, with the consent of the presiding judge of the receiving judicial district or by the chief justice under N.D. Const. art. VI, § 3.

Section 7. Proceedings on the Record.

Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases under N.D.C.C. § 39-06.1-03, proceedings must be heard on the record.

Section 8. Removal from Referee.

Any party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge, if written request is filed by the party within seven days after service of either the initiating documents or other notice informing the party of this right.

Section 9. Standard of Conduct.

The Rules of Judicial Conduct must be observed by each judicial referee.

Section 10. Findings and Order.

(a) The findings and order of the judicial referee have the effect of the findings and order of the district court until superseded by a written order of a district court judge.

(b) Copies of the findings and order together with written notice of the right of review must be promptly served on the parties under N.D.R.Civ.P. 5.

Section 11. Procedure for Review.

(a) Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases under N.D.C.C. § 39-06.1-03, a review of the findings and order of a judicial referee may be ordered at any time by a district court judge and must be ordered if a party files a written request for a review within seven days after service of the notice in Section 10(b). The request for review must state the reasons for the review. A party requesting review must give notice to all other parties. A party seeking to respond to a request for review must file their response within 14 days after service of notice of the request.

(b) The review by a district court judge must be a de novo review of the record. The district court may:

- (1) adopt the referee's findings;
- (2) remand to the referee for additional findings; or
- (3) reject the referee's findings.

(c) If the district court judge rejects the referee's findings, the court shall issue its own findings of fact, with or without a hearing.

EXPLANATORY NOTE

Section 5 was amended, effective September 1, 2013, to reflect enactment of 2013 House Bill No. 1075 [2013 N.D. Sess. Laws ch. 241, §1], which added three categories of cases to the statutory list of proceedings that may be delegated to a judicial referee by a presiding judge: disorderly conduct restraining order cases, noncriminal game and fish violations, and review of administrative license suspensions for nonpayment of child support.

Section 5 was amended, effective March 1, 2012, to allow a presiding judge to authorize a judicial referee to preside in proceedings involving disorderly conduct restraining orders.

Section 5 was amended, effective March 1, 2014, to allow a presiding judge to authorize a

judicial referee to preside in small claims and traffic court proceedings.

Section 5 was amended, effective March 1, 2015, to allow a presiding judge to authorize a judicial referee to preside in emergency guardianship proceedings.

Section 5 was amended, effective August 1, 2017, to allow a presiding judge to authorize a judicial referee to preside in sexual assault restraining order proceedings.

Section 5 was amended, effective March 1, 2018, to allow a presiding judge to authorize a judicial referee to preside in eviction and guardianship proceedings.

Section 7 was amended, effective March 1, 2014, to clarify that small claims and traffic court matters decided by a judicial referee are not heard on the record.

Section 8 was amended, effective March 1, 2011, to increase the time to request a district court judge from five to seven days after service of initiating documents. A "proceeding" under this rule has the same meaning as a proceeding under N.D.C.C. § 29-15-21.

Section 11(a) was amended, effective March 1, 2011, to increase the time to request a review from a district court judge from five to seven days after service of the right to review. The time to respond to a request for review was increased from 10 to 14 days after service of notice of the request.

Section 11(a) was amended, effective March 1, 2014, to clarify that small claims and traffic court matters decided by a judicial referee are not reviewable or appealable.

SOURCE: Joint Procedure Committee Meeting Minutes of April 24-25, 2014, pages 10-12; September 26, 2013, pages 2-6; January 31-February 1, 2013, page 29; September 23-24, 2010, pages 14-15, 21; April 29-30, 2010, page 21; April 24-25, 2003, page 3; January 30-31, 2003, pages 21-23; April 25-26, 2002, pages 16-17; May 6-7, 1999, pages 14-15; April 29-30, 1993, page 2. Court Services Administration Committee Meeting Minutes of May 17, 1985, pages 2-4. Family Caselaw Referee Study Subcommittee of Court Services Administration Committee Meeting Minutes of April 19, 1985, pages 3-8; March 15, 1985, pages 1-6; February 22, 1985, pages 1-9; January 11, 1985, pages 2-8; and December 17, 1984, page 5. North Dakota Constitution, Article VI, Section 3; and Section 27-05-30 N.D.C.C.

[Adopted as emergency rule effective June 13, 1985; readopted September 17, 1985; amended effective March 1, 1994; January 1, 1995; March 1, 2000; March 1, 2003; March 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012; September 1, 2013; March 1, 2014; March 1, 2015, August 1, 2017; March 1, 2018.]