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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

NOV 15 2018

In the Matter of the Estate of
Arline H. Hogen, Deceased

STATE OF NORTH DAKOTA
Supreme Court No. 20180325

Steven C. Hogen,
Petitioner and Appellee

Civil No. 09-07-P-100
(Cass County District Court)

vs.

Rodney Hogen,
Respondent and Appellant

and

Susan Hogen and Marby Hogen,
Purported Interested Persons and Appellants

**BRIEF OF RESPONDENT-APPELLANT
AND INTERESTED PERSONS AND APPELLANTS**

and Addendum

APPEAL FROM (1) ORDER FOR SUPERVISED ADMINISTRATION;
(2) ORDER FOR DELIVERY OF POSSESSION AND CONTROL OF ESTATE
PROPERTY; (3) ORDER DENYING PETITION RESTRAINING PERSONAL
REPRESENTATIVE; (4) ORDER BIFURCATING ISSUES; (5) ORDER
ON PETITION FOR COMPLETE SETTLEMENT AND DISTRIBUTION OF THE
ESTATE; (6) ORDER GRANTING MOTION TO CONSOLIDATE HEARINGS;
AND (7) ORDER DISCHARGING PERSONAL REPRESENTATIVE AND
DENYING RODNEY HOGEN'S DECLARATION AND PETITION

CASS COUNTY DISTRICT COURT, EAST-CENTRAL JUDICIAL DISTRICT
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[¶1]

ISSUES ON APPEAL

- [¶2] A. Did Steven C. Hogen's appointment as personal representative terminate, under the provisions of N.D.C.C. § 30.1-17-10, when the District Court issued the following three (3) orders: (1) Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 on October 24, 2013 [Docket #436]; (2) Amended Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 [Docket #490]; and/or (3) Order of March 6, 2014, that referred to these orders, and recognized that Rodney Hogen was a 50% distributee and Steven Hogen was a 50% distributee [Docket #506]?¹
- [¶3] B. Did the District Court err when it failed to issue an order restraining the personal representative from exercising any power over Rodney Hogen's inherited real property, including any attempt to lease or sell the property?
- [¶4] C. Were the Court's mandate and determinations, issued in Estate of Hogen, 2015 ND 125, 863 N.W.2d 876, rejected by the District Court when it: (1) failed to restrain the personal representative with respect to Rodney Hogen's inherited lands; (2) issued an order excluding Rodney Hogen from his possession of his inherited real property; (3) issued an Order Bifurcating

¹ Estate of Hogen, 2015 ND 125, 863 N.W.2d 876, resulted in a remand with resulting October 6, 2015, Order for Entry of Second Amended (on Remand) Order on Petition for Approval of Final Account, for Determination of Testacy Status, and for Settlement of Estate; Docket Entry #571. No appeal was taken by any party from the October 6, 2015, Order.

Issues which rejects this Court's determination that Rodney Hogen's prior appeal was from a "final accounting and settlement in the probate of the estate of Arline Hogen" [See, Estate of Hogen, *supra.*, ¶ 1]; and (4) issued an Order on Petition for Complete Settlement and Distribution of Estate that (i) alters the nature and amount of the claimed "right of retainer" against Rodney Hogen; (ii) authorizes the forced sale of Rodney's lands to pay the claimed "retainer" and attorney fee even though this Court determined the prior "retainer" proceedings did not involve a "claim" within the meaning of N.D.C.C. § 30.1-19-03(2); and (iii) thwarts the affirmed order for a 50% distribution to Rodney Hogen and a 50% distribution to Steven Hogen.

[¶5] D. Did the personal representative have any right to possession of Rodney Hogen's inherited lands after the District Court issued the following three (3) orders: (1) Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 on October 24, 2013 [Docket #436]; (2) Amended Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 [Docket #490]; and/or (3) Order of March 6, 2014, that referred to these orders, and recognized that Rodney Hogen was a 50% distributee and Steven Hogen was a 50% distributee [Docket #506]?

[¶6] E. Other than issuing a ministerial deed of distribution to Rodney Hogen and Steven Hogen as equal tenants in common, did the personal representative's

power over title to Rodney Hogen's inherited lands lapse after the District Court issued the following three (3) orders: (1) Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 on October 24, 2013 [Docket #436]; (2) Amended Order on Petition for Approval of Final Account for Determination of Testacy Status, and Settlement of Estate under N.D.C.C. § 30.1-21-01 [Docket #490]; and/or (3) Order of March 6, 2014, that referred to these orders, and recognized that Rodney Hogen was a 50% distributee and Steven Hogen was a 50% distributee [Docket #506]?

- [¶7] F. Was the lower court's jurisdiction [and/or personal representative's authority] in the supervised probate proceedings limited to rentals actually paid to the personal representative for Barnes County lands for crop years of 2014, 2015, and/or 2016?
- [¶8] G. Was the ordered supervised probate administration [administration ordered *ex parte* on January 11, 2016] a "subsequent administration", within the meaning of N.D.C.C. § 30.1-21-08, and limited in scope to the "subsequent discovered estate" of Barnes County rentals received by the personal representative in years 2014, 2015, and/or 2016?
- [¶9] H. Did the court err when it authorized attorney fees, that were affirmed in Estate of Hogen, supra.] to be paid through sale of the devisees' inherited lands, even though barred by N.D.C.C. § 30.1-19-03(2), N.D.C.C. § 30.1-21-06, N.D.C.C. § 30.1-21-08, or N.D.C.C. § 28-01-16?

- [¶10] I. Did the District Court deny Rodney Hogen Due Process of Law [Fourteenth Amendment] when it determined, without benefit of a trial or appropriate action, he owed rentals totaling \$55,379.73, together with interest at 6%, for crop years 2014, 2015, and/or 2016, and then subjected his inherited lands to a lien, and payment of such lien through sale of Rodney Hogen's lands by the personal representative?
- [¶11] J. Did the District Court deny Rodney Hogen Due Process of Law [Fourteenth Amendment] when it converted its determined "right to retainer" into a monetary lien against inherited real property, and then authorized payment of such lien through sale of Rodney Hogen's lands by the personal representative?
- [¶12] K. Did the District Court err in expunging Rodney Hogen's lis pendens?
- [¶13] L. Did the District Court err, and deny Rodney Hogen Due Process of Law [Fourteenth Amendment], when it determined without benefit of pleadings, trial or evidence, that the post-appeal litigation was due to "Rodney's stubborn refusal to comply with court orders and to follow standard probate procedures"?
- [¶14] M. Did the District Court err, and deny Rodney Hogen Due Process of Law [Fourteenth Amendment], when it determined without benefit of pleadings, trial or evidence, that Rodney Hogen exercised unauthorized control over the land and interfered with the personal representative's ability to manage estate resources including receipt of appropriate farm rent?

- [¶15] N. Does the mere recording of a lis pendens, a document providing notice to the public of litigation affecting interests in real property, interfere with either a personal representative's power over title or his possession of real property, and can it be a "direct" violation of the lower court's February 2, 2016, order?
- [¶16] O. Was Rodney Hogen's recording of a lis pendens a form of constitutionally protected free speech, and not subject to unreasonable prior judicial restraint?
- [¶17] P. Can the lower court's order of February 2, 2016, be construed to prohibit the filing of a lis pendens and, if so, is the order an unreasonable prior judicial restraint of free speech?
- [¶18] Q. Is Rodney Hogen's recording of a lis pendens a privileged communication under N.D.C.C. § 14-02-05?
- [¶19] R. Did the lower court err when it released the two (2) Lis Pendens filed by Rodney Hogen concerning Barnes County and Cass County lands?
- [¶20] S. Are the various Lis Pendens filed by the Appellants, and released by interlocutory orders of various courts, still effective so as to prevent pendite lite purchasers from claiming the protection of N.D.C.C. § 30.1-18-14?
- [¶21] T. Did the lower court err by not allowing the Appellants a hearing concerning whether pendite lite purchasers acted with the "good faith" necessary to have the protection of N.D.C.C. § 30.1-18-14?
- [¶22] U. Did the District Court err when, on April 3, 2017, it shifted all post-remand attorney fees to Rodney Hogen, without the procedural and substantive

protections of N.D.R.Civ.P. 11 and N.D.C.C. § 28-26-01(2), merely because he pursued his provisional remedy of a lis pendens and continued to voice his objections to post-remand probate proceedings violative of law?

- [¶23] V. Did the District Court err in allowing the massive amount of post-remand attorney fees to be paid to Ohnstad Twichell P. C. without the law firm bringing a timely motion within 21 days of the April 3, 2017, order, as required by N.D.R.Civ.P. 54(e)(3), and without meaningful hearing, legal basis, and/or adequate findings concerning the reasonableness of the attorney fees?
- [¶24] W. Did the District Court err in not applying the “American Rule” concerning attorney fees for all post-remand proceedings?
- [¶25] X. Did Ohnstad Twichell P.C. forfeit any right to receive legal fees from Estate assets, or from the devisees or interested persons’ assets, by participating in litigation designed to promote Steven C. Hogen’s personal interests that conflict with Arline Hogen’s Will that provides for an equal distribution of property?
- [¶26] Y. Do the provisions of N.D.C.C. § 30.1-20-11 protect Rodney Hogen, Susan Hogen and Marby Hogen from a forced partition [or forced allocation] and sale of partitioned lands of his inherited lands without substantial compliance with procedural and substantive rights found within Chapter 32-16 of the North Dakota Century Code?
- [¶27] Z. Are all of the transactions of the personal representative – to allocate,

partition, sell or encumber the Appellants' real estate interests – void because the District Court acted (1) without jurisdiction due to its prior “final” order, and/or (2) the inferior court acted in a manner that was not in substantial compliance with its *in rem* statutory jurisdiction; and/or (3) without prior notice and a meaningful hearing afforded to all interested persons?

[¶28] AA. Did the Appellants' declaration, made under N.D.C.C. § 30.1-18-13, effectively void the allocation, partition, sale, encumbrances and deeds of real property once owned by the decedent?

[¶29] BB. Did the District Court err by (1) not accepting the Appellants' declaration voiding all post-remand transactions of the personal representative; (2) by *ex parte* order consolidating hearings so as to deprive Appellants [and all interested persons] of a meaningful hearing [based upon pleadings and discovery]; (3) not recognizing the personal representative's substantial conflict of interest concerning the voided transactions; and (4) not providing Due Process to all interested parties?

[¶30] CC. Did the District Court err when it discharged the personal representative even though he failed to follow the directive of Arline Hogen's controlling Will [and the pre-remand affirmed order] of an equal distribution?

[¶31] DD. Does the probate court have the right to make a contract for a devisee when that devisee did not enter into, nor consent to, that court-made contract?

[¶32] **STATEMENT OF THE CASE**

[¶33] This appeal trails this Court's decision of Estate of Hogen, 2015 ND 125, 863 N.W.2d

876. In this appeal, Rodney Hogen [“Rodney”], his wife Susan Hogen [“Susan”], and his daughter Marby Hogen [“Marby”] [collectively “the Hogens”] assert the lower probate court did not substantially comply with its statutory probate authority, thereby invalidating all but one (1) of its orders that trail its October 1, 2015, Order [App., ps. 155-159; “final” - never appealed] which was entered so as to comply with this Court’s remand from Rodney’s first appeal [the order denying consolidation (App., ps. 234-237) is not attacked]. The Hogens further assert said probate court’s order(s), if not invalid as a matter of law, cannot be sustained as such orders are unjust and inequitable to Rodney. Such orders require Rodney to pay rent on his own inherited lands that exceed the income the land produces. It creates a rental obligation imposed upon Rodney to the Estate even though the land’s mortgagees intercepted 2016 rentals and the Estate failed to pay any post-remand mortgage payments. The Hogens further assert that all of the post-appeal transactions relating to the sale of Rodney’s inherited lands, transferred in part to Susan and Marby, have been voided by the Hogens – as they properly exercised their right to do so under the provisions of N.D.C.C. § 30.1-18-13. The Hogens claim no person dealing with Steve Hogen [“Steven”], as a personal representative, could claim to have acted in good faith with him due to a Lis Pendens, later improperly discharged by the probate court.

[¶34] This probate case was fully concluded following the district court’s actions after remand. Steven did not subsequently honor the law, nor the elected probate procedure for formal proceedings terminating administration under N.D.C.C. § 30.1-21-01 which results in “an order of complete settlement of the estate”. The procedural history leading to this timely appeal is set forth in ¶s 6-44 [App., ps. 350-366] of the Hogens’ “Declaration” that

voided all of Steven's transaction relating to the sale of the Hogens' real property. The Hogens were denied a meaningful hearing on their Declaration. The lower court consolidated Steven's petition seeking his discharge and the Hogens' petition(s). App., p. 15. After oral arguments, the Hogens were denied their requested relief in their Petition and/or their objection [App., ps. 416-429] to Steven's discharge. App., ps. 430-443. On August 23, 2018, the Hogens timely appealed to this Court. App., ps. 467.

[¶35] **STATEMENT OF FACTS**

[¶36] Arline Hogen died on March 23, 2007. Rodney and Steven are equal devisees under their mother's (Arline Hogen) Will. App., p. 24.

[¶37] On October of 2013, in formal proceedings initiated by Steven's petition(s) under the authority of N.D.C.C. § 30.1-21-01 [App., ps. 26-57, 58-69], the probate court determined Arline's Will was valid, and ordered Steven to submit "an amended final account". App., p. 83. Steven submitted his "amended final account" showing he had \$35,100.28 in a checking account, a right of retainer against Rodney, and real estate valued at \$675,756.00 on hand "for payment" and "for distribution." App., ps 112-113. Steven's "final" accounting showed his fees of \$27,500.00 and his attorney fees of \$285,823.31 were unpaid. *Id.*

[¶38] In a March 6, 2014, Order, the probate court approved Steven's "Second Amended Final Report", and determined Rodney and Steven were each 50% distributees. App., ps. 118-119. The probate court determined its March 6, 2018, Order was a "final Judgment" and "ends the action" for matters expressed therein. App., p. 119. Previously, the probate court announced that when it determined the amount of Steven's claimed right to retainer, "the

Estate will be distributed accordingly and this case will be over.” Tr. of 7/22/2010; p. 63.

[¶39] When issuing its concluding orders in 2013 and 2014, the probate court did not reserve jurisdiction to either sell, allocate, or partition Rodney and Steven’s inherited real property.

[¶40] In February, 2014, Rodney quit claimed all of his inherited real property to Marby, reserving a life estate onto himself and Susan. App., ps. 280-285. Rodney then filed his first appeal, resulting in the decision of Estate of Hogen. App., ps. 124-147.

[¶41] In 2014 and 2015, while Rodney’s first appeal was pending, Rodney farmed the Cass County lands. In 2014, Rodney’s net farm “profit” was \$2,916.00. In 2015, Rodney’s net farm “profit” was \$25,442.00. Rodney’s net farm” profit” was from all lands inherited through both of his parents, not just from Arline – and from his own labor. App., ps. 269, 278-279. In 2014, the evidence shows that Rodney paid \$12,046.88 [\$1,646.55 + \$1,389.50 + \$5,130.43 + \$3,880.40] in principal and interest mortgage payments. App., ps. 271-272, 274, and 276. In 2015, the evidence shows that Rodney paid \$30,503.53 [\$5,439.95 + \$5,414.53 + \$8,859.27 + \$343.08 + \$1,427.13 + \$4,974.50 + \$4,045.07] in principal and interest mortgage payments. App., ps. 271-272, 274 and 276.

[¶42] In 2016, the Estate demanded possession of the Cass County lands – the first time since the lower court’s 2013-2014 concluding orders. App., ps. 174-177. Steven had been taking the tenant’s rents from the Barnes County lands, attributable to devise of Arline, since 2010.

[¶43] In February 2016, the lower court determined Steven could retake possession of the Cass County farmlands. App., ps. 215-219, 301.

[¶44] For the 2016 crop year, the evidence shows that Rodney paid \$22,997.72 [\$10,878.95 + \$1,946.14 + \$5,457.89 + \$1,976.68 + \$2,738.06] in principal and interest mortgage payments. App., ps. 271, 272, 274 and 276. The evidence reveals that at least one mortgagee was exercising its assignment of rents. App., p. 249.

[¶45] In 2017, the lower court determined Rodney owed a “rental” and “interest” obligation to the Estate for 2014, 2015 and 2016 despite (a) Rodney’s payment of all mortgages [including a mortgage that was half-owed by Steven], (b) the Estate was not in possession, nor making a timely demand for 2014-2015 rents, and (c) the mortgagee’s exercise of its assignment of rents. App., p. 302.

[¶46] **LAW AND ARGUMENT**

[¶47] **Standard of Review:** All issues raised are questions of law or mixed questions of law and are fully reviewable by this Court.

[¶48] **Point 1. The lower court failed to substantial comply with its statutory jurisdiction, acting in excess of its statutory jurisdiction, or without jurisdiction, when entering its Order on Petition for Complete Settlement and Distribution of Estate of April 3, 2017.**

[¶49] As stated in In re Guardianship of M.E., 2015 ND 267, ¶ 13, 871 N.W.2d 435:

“In cases before the adoption of the Uniform Probate Code, this Court stated, ‘Probate procedure ... is wholly statutory. Substantial compliance is required.’ *In re Estate of Ashbrook*, 110 N.W.2d 184, 190 (N.D. 1961); *see also In re Estate of Anderson*, 76 N.D. 163, 167, 34 N.W.2d 413, 415-16 (N.D. 1948).”

When issuing its concluding order of April 3, 2017, the probate court acted in excess of its jurisdiction, or without jurisdiction, because it failed to substantially comply with its

statutory authority or procedure. Because the probate court did not substantially comply with its statutory authority, its post-appeal order(s) [orders trailing the decision of Estate of Hogen, supra.] are invalid for the following reasons:

[¶50] A. Failure to honor the finality of N.D.C.C. § 30.1-21-01 Order(s).

[¶51] The formal proceedings, first initiated by Steven in 2010 [App., ps. 26-69] under N.D.C.C. § 30.1-21-01, concluded circa 2013-2014 [App. ps. 70-84, 118-119], and resulted in the termination of Steven’s personal representative powers [or authority] in 2013-2014 because N.D.C.C. § 30.1-17-10(2) provides:

“An order closing an estate as provided in section 30.1-21-01 or 30.1-21-02 terminates an appointment of a personal representative.”

The probate court’s “Order on Second Amended Petition for Approval of Final Account and Rule 54(b) Certification” [App., ps. 118-1119] clearly establishes “Rodney Hogen, a 50% distributee, (and) Steve Hogen, .. also a 50% distributee”. Had Steven desired to contest (a) the ordered distribution on a 50/50 basis or (b) the termination of his authority in 2013 [termination as a matter of law invited by Steven’s own petition(s) for formal statutory closing], Steven should have cross-appealed as to those issues in 2014, but Steven chose not to do so. This Court’s decision “approving a final accounting and settlement in the probate of the estate of Arline Hogen” [Estate of Hogen, ¶ 1] is also final. The right to a 50% distribution is final, and is the law of the case. Riverwood Commercial Park, L.L.C. v. Standard Oil Co., Inc., 2007 ND 36, ¶ 12, 729 N.W.2d 101. The probate court acted without jurisdiction to alter that final judgment that had ordered distribution of all real property and the claimed right to retainer [as a chose in action] to Steven and Rodney equally, as Arline’s

Will provides. The lower court acts inconsistently with its statutory authority in not recognizing its own order(s), made under the authority of N.D.C.C. § 30.1-21-01, had terminated Steve’s powers as a personal representative. See, Estate of Cashmore, 2010 ND 159, ¶s 13-14, 787 N.W.2d 261 [“Cashmore I”]. See also, the follow-up case commonly called Cashmore II – In re Estate of Cashmore, 2013 ND 150, ¶ 15, 836 N.W.2d 427, which condemns even verified statements seeking amendment of final accountings and distributions:

Just as we ruled the personal representative had no authority to file a petition to approve an “amended” final accounting after the final judgment had been entered approving the original final accounting and distribution, *see Cashmore*, at ¶ 14, the personal representative could not file a verified statement under N.D.C.C. § 30.1–21–03 (U.P.C. § 3–1003) to once again attempt to effectively amend the final accounting and distribution.

Steven was legally barred from seeking any amendment of “final” court orders, to include the 50/50 distribution; his appointment/authority had terminated as a matter of law. Cashmore I, ¶ 13.

[¶52] The lower court’s 2013 and 2014 concluding order(s), now “final”, were made upon Steven’s own petition under N.D.C.C. § 30.1-21-01, and affirmed on appeal. The two (2) affirmed orders, and the third final order [never appealed following remand directed by Estate of Hogen, 2015 ND 125, 863 N.W.2d 876], are the law of the case and/or everyone is subject to the mandate rule. Riverwood Commercial Park, L.L.C. v. Standard Oil Co., Inc., 2007 ND 36, ¶12, 729 N.W.2d 101; and also, Viscito v. Christianson, 2016 ND 139, ¶7, 881 N.W.2d 633 [citing Carlson v. Workforce Safety & Ins., 2012 ND 203, ¶ 16, 821 N.W.2d 760 (citations and quotation marks omitted)]; see also Inv’rs Title Ins. Co. v. Herzig,

2013 ND 13, ¶ 10, 826 N.W.2d 310]:

“Generally, the law of the case is defined as the principle that if an appellate court has passed on a legal question and remanded the cause to the court below for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same. In other words, [t]he law of the case doctrine applies when an appellate court has decided a legal question and remanded to the district court for further proceedings, and [a] party cannot on a second appeal relitigate issues which were resolved by the Court in the first appeal or which would have been resolved had they been properly presented in the first appeal. The mandate rule, a more specific application of law of the case, requires the trial court to follow pronouncements of an appellate court on legal issues in subsequent proceedings of the case and to carry the [appellate court's] mandate into effect according to its terms.... and we retain the authority to decide whether the district court scrupulously and fully carried out our mandate's terms.

All of the subsequent actions of Steven, and his attorneys, are barred by both legal principles, and the lower court must always follow the pronouncements of an appellate court on legal issues in subsequent proceedings – this decedent’s estate previously achieved “settlement” [N.D.C.C. § 30.1-01-06(49)], and could not be re-opened without violating established legal principles, and law.

[¶53] B. Misapplication of subsequent administration statutes.

[¶54] The probate court erred when it granted Steven’s petition for supervised administration after the probate court had issued its concluding order(s) of 2013-2014. Under N.D.C.C. § 30.1-21-08, subsequent administration is generally never possible unless “other property of the estate is discovered after an estate has been settled”; Steven’s petition did not identify any subsequently discovered property. App., ps. 170-172; Cashmore I, ¶ 13, noting existence of N.D.C.C. Chap. 30.1-21, but only for “additional property of the estate . discovered after the estate has been closed”. The lower court issued its order without due

process afforded Rodney – he was not even allowed time to respond to Steven’s position, nor a meaningful hearing when he objected. App., ps. 170-172, 200; Tr. of 02/02/2016, ps. 4-10.

[¶55] C. Failure to honor non-claim statutes and statute of limitations.

[¶56] The probate court acted inconsistently with its statutory jurisdiction when it authorized Steven, in his illicit subsequent administration, to pay Ohnstad Twichell attorney fees that were barred by either the non-claim statute, statutes within the Uniform Probate Code and/or other statutes of limitations. Probate “claims” include administrative expenses. N.D.C.C. § 30.1-01-06(7). Claims arising after death must be presented within three (3) months after they arise under N.D.C.C. § 30.1-19-03(2). Claims are barred three (3) years after a decedent’s death, or one (1) year after distribution under N.D.C.C. § 30.1-21-06. Ohnstad Twichell failed to file a timely claim before the final order(s) of 2013-2014. Estate of Hogen, *supra.*, ¶s 29-30. Ohnstad Twichell could have, but failed to bring an action against Rodney or Steven within that requisite one (1) year period. See, Opp v. Ward Cty. Soc. Servs. Bd., 2002 ND 45, ¶ 15, 640 N.W.2d 704. The law firm’s “claim” for fees for its work prior to February, 2014, are barred under the probate statutes. Some of these fees, erroneously allowed to be paid in 2018, were even barred under N.D.C.C. § 28-01-16, because Ohnstad Twichell provided no service for over six (6) years before payment. District Court Docket #457 and #461. The probate court acted inconsistently with its statutory authority when it allowed Steven to pay barred attorney fees without Rodney’s consent/waiver. N.D.C.C. § 30.1-19-02.

[¶57] D. Failure to honor N.D.C.C. § 30.1-20-11.

[¶58] The probate court acted inconsistently with N.D.C.C. § 30.1-20-11 when it ordered

the personal representative to “allocate the estate real property”. Since the real property devolved upon Arline’s death to Rodney and Steven as equal tenants in common, there is no statutory authority to “allocate” real property by the personal representative without the consent of all devisees. If Steven desired a different distribution than what is required by Arline’s Will, the Hogens were entitled to the timely “partition of the property in the same manner as provided by Chapter 32-16” of the North Dakota Century Code. N.D.C.C. § 30.1-20-11 (before formal closing). The probate court acted without statutory authority when it untimely authorized Steven to allot lands without compliance with the provisions of Chapter 32-16. The “allocation” and sale authorized by the probate court denied the Hogens the protection of a Lis Pendens [N.D.C.C. § 32-16-04]; a contemporaneous valuation and payment of life estates and future interests [N.D.C.C. § 32-16-28 and N.D.C.C. § 32-16-30]; a public sale in which the Hogens could participate and apply their determined interests towards the purchase price [N.D.C.C. § 32-16-24 and N.D.C.C. § 32-16-35], a trial as to all factual claims [N.D.C.C. § 32-16-23], and other substantive rights enjoyed by parties to a partition action. The lower court erroneously accepted Steven’s unfair allocation of land, even though it knew the Hogens were denied any right to participate in the sale of their lands, and were denied the protection of substantive law within Chapter 32-16 of our code. App., ps. 386-389.

[¶59] E. **Failing to honor the notice requirements of N.D.C.C. § 30.1-03-01.**

[¶60] The lower court exceeded its jurisdiction when it first authorized, and then accepted Steven’s sale of real property once owned by Arline, without prior notice or a meaningful opportunity to be heard being afforded to Rodney’s transferees, Susan and Marby. The

provisions of N.D.C.C. § 30.1-03-01 require notice to all interested persons. Susan and Marby, having a property right through Rodney's deeds, are interested persons. N.D.C.C. § 30.1-01-06(26). Without notice to Susan or Marby, no estate proceeding subsequent to February 20, 2014, could be binding on them, or their interests in the lands. Alward v. Borah, 381 Ill. 13, 44 N.E.2d 865 (1942). The lower court erred when it did not recognize, as courts in all civilized countries recognize, it had no power to divest Marby or Susan of their vested rights without notice and a meaningful opportunity to be heard. *Id.* Federal due process rights are implicated. *Richards v. Jefferson County, Ala.*, 517 U.S. 793, 796 (1996).

[¶61] F. **Failure to honor N.D.C.C. § 30.1-20-06.**

[¶62] The lower court exceeded its statutory authority when it ordered "any capital gains taxes associated with the sale of real property herein shall be assessed against and paid by the devisee to whom such property has been allocated herein." If a personal representative sells real property, the estate itself should be responsible for the tax, and the net proceeds distributed to the devisees [or their grantees] as their interests appeared in the sold property. N.D.C.C. § 32-16-20. There is no statutory authority to sell a devisee's real property, incur capital gain taxes at the tax rate of an estate, and impose that tax rate upon an individual devisee. The lower court's order exceeds its statutory authority for it negates the date of distribution rule for the valuation of property mandated by N.D.C.C. § 30.1-20-06. The disproportionate distribution of lands, erroneously accepted by the lower court, was based on 2007 date of death values of land (favoring Steven) and 2018 (with accruing interest) of Steven's claimed retainer against Rodney [without consideration of Rodney's defenses]. App., ps. 243-245. Steven fraudulently asserted an agreement existed as to Steven's desired

disproportionate allocation, but Steven's assertions were untrue. App., ps. 240, 360-361; District Court Docket #432. The lower court errs when it does not require all property, distributed by Steven as a personal representative, to be uniformly valued on the date of distribution. The lower court errs when it allows a sale of all of the Hogens' interest, but allows Steven to retain real property as a distribution. The lower court further errs when it did not recognize its prior "final" order for equal distribution, as Arline's Will directs (now made subject to Rodney's 2014 transfers to his wife and daughter).

[¶63] G. Misapplication of N.D.C.C. § 30.1-20-03 and N.D.C.C. § 30.1-18-09.

[¶64] Hogens respectfully submit the lower court erred when it ordered a retainer to be imposed upon Rodney for 2014-2016 crop years. The lower court's order stems from its misapplication of N.D.C.C. § 30.1-20-03 and N.D.C.C. § 30.1-18-09. If Steven's powers had not ended in 2014 by the probate court's acceptance of his "final" account, Steven would have had the right to demand possession of the Cass County lands under N.D.C.C. § 30.1-18-09. There is no evidence, below, where Steven made a timely demand for possession for the 2014-2015 crop years. In North Dakota, since title to real estate vests at time of death in the devisee - who are entitled to possession and all rights incident thereto - the owners are unaffected by N.D.C.C. § 30.1-18-09 until the personal representative exercises his right under the statute, and actually takes possession of the real estate. Belakjon v. Hilstad, 35 N.W.2d 637, 641-642 (N.D. 1949) and Shepard v. Widhalm, 2012 MT 276, 290 P.3d 712. A personal representative's qualified possession under N.D.C.C. § 30.1-18-09 is permissive, not imperative, and the devisees' possessory rights remains unaffected until the personal representative exercises his right to take possession. Belakjon v. Hilstad, ps. 641-642. This

Uniform Probate Court statutory provision did not change the rule of law earlier expressed in Balakjon. See, Shepard v. Widhalm, *supra*. If a personal representative fails to exercise his statutory right, the devisee is not accountable to the estate for the rents and profits from the land during the devisee's possession. In re Korhonen, 1999 WL 1101408 at *3 (Minn. Ct. App. on Dec. 7, 1999).

[¶65] If a personal representative is in possession, N.D.C.C. § 30.1-18-09 requires him “take all steps reasonably necessary for the management, protection, and preservation of, the estate” in his possession. This statutory duty would require the personal representative, who has vigorously resisted distribution of the lands to the devisees for over eleven (11) years, to pay the mortgage payments [or at least the interest thereon] if rents are intercepted by the estate. Estate of Rozanski, 514 A.2d 587 (Pa.Super. 1986); N.D.C.C. § 59-04.2-24. It is respectfully submitted that Steven, as personal representative, failed to make the mortgage payments on Arline's former lands [existing at time of the death] causing the mortgagee to enforce its assignment of rents as to any rents claimed due the Estate. App., p. 249.

[¶66] Rodney has the “benefit of any defense” to defeat Steven's claimed retainer. N.D.C.C. § 30.1-20-03. Rodney's post-remand defense(s) to Steven's claimed retainer arising out of 2014-2016 rents, included: (1) the termination of Steven's powers; (2) the inequity or requiring Rodney to pay rent [that exceeds income the lands produce] when the Estate does not make mortgage payments; (3) 2016 payment made to mortgagee exercising assignment of rents; (4) the Estate's lack of possession. App., p. 264-270; Tr. of 03/02/2017, p. 15. Rodney's defense to the enforcement of the Estate's enforcement of 2007-2013 determined retainer included: (1) the prior 2013-2014 final distribution and limitations upon

Steven's subsequent administration; (2) and appropriate statutes of limitations. App., ps. 292-296.

[¶67] The lower court, acting inconsistently with its statutory authority, erroneously rejected all of Rodney's defenses to Steven's claimed retainer without benefit of a trial, or pleadings, as to 2014-2016 amounts. App. , p. 298-305. The lower court erroneously treated the prior claimed retainer [previously treated as thing in action and distributed by final order to both devisees] as a monetary judgment still owed the Estate by Rodney allowing "judgment" interest to accrue. App., p. 298. The erroneous effect of the treatment and error will be addressed in Point 4 below.

[¶68] Point 2. The lower court's order of April 3, 2017, shifting all post-remand attorney fees to Rodney should be reversed under the abuse of discretion standard and/or lack of statutory authority.

[¶69] In ¶16 of its April 3, 2017, order [App., p. 304], the lower court states it shifted attorney fees to Rodney because of (1) "Rodney's stubborn refusal to comply with court orders"; (2) Rodney's "failure to follow standard probate procedure"; (3) Rodney's "unauthorized control over the land"; (4) Rodney's "continued objections"; and (5) Rodney's convoluting the title by "filing a lis pendens". App., p. 304. When making its findings, Rodney, a devisee, was not under any order to do any act, and the lower court does not identify the "orders" Rodney did not comply with, nor what "standard probate procedure" was violated by Rodney. Rodney's "continued objections" involve mere court advocacy protected by the First Amendment to Constitution of the United States, and its North Dakota constitutional counterpart. Rodney, as an owner of the land since Arline Hogen's death, can

never exercise “unauthorized control” of the land for possessory rights remains unaffected until the personal representative exercises his right to take possession. Belakjon v. Hilstad, ps. 641-642. Rodney’s possessory rights, and his right to alienate his inherited lands, is protected by the Fourteenth Amendment to Constitution of the United States and North Dakota’s constitutional counterpart in Article 1, § 1.

[¶70] The lower court’s order, reasoning, and procedural path taken is inconsistent with N.D.R.Civ.P. 11, N.D.C.C. § 28-26-01(2), and N.D.C.C. § 30.1-18-20. Neither the court’s inherent powers, nor the contempt powers, can sustain the sanction [punishment] imposed upon Rodney [requiring Rodney to pay all post-remand attorney fees]. When shifting all post-remand attorney fees to Rodney, the lower court erroneously punishes Rodney for exercising rights protected by the Constitutions of the United States of America and the Constitution of North Dakota. The shifting of the payment of all post-remand attorney fees to Rodney should be reversed for the following reasons:

[¶71] A. **Court’s failure to follow Rule 11 procedures.**

[¶72] Neither Rodney, nor his attorneys, have been afforded the procedural protections of N.D.R.Civ.P. Rule 11. Steven did not bring a motion under N.D.R.Civ.P. 11, and Rodney was not afforded the 21 day *safe harbor* to withdraw or correct his alleged offending court document. N.D.R.Civ.P. 11(c)(2). Taking into account the provisions of N.D.R.Civ.P. 11(c), it was inappropriate to order monetary sanctions against Rodney by the lower court’s own initiative. Before imposing sanctions in the nature of shifted attorney fees, the lower court must “first” issue an order to Rodney “to show cause why conduct specifically described in the order has not violated Rule 11(b)” as required by N.D.R.Civ.P. 11(c)(3).

See, Clark v. United Parcel Serv., Inc., 460 F.3d 1004, 1008 (8th Cir. 2006). Not only did the lower court fail to “first” issue an order to show cause to Rodney describing the specific offending conduct, the lower court failed to explain how its sanction was “limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated” as required by N.D.R.Civ.P. 11(c)(4).

[¶73] B. Inapplicability of N.D.C.C. § 28-26-01(2).

[¶74] Neither Steven, nor the lower court, have ever plead in reply or made a factual determination that any “claim for relief” made by Rodney was frivolous within the meaning of N.D.C.C. § 28-26-01(2). Throughout the eleven (11) year probate history, Rodney made only five (5) requests of the lower court for affirmative relief, and all five (5) requests for affirmative relief were based upon probate code statutes. Prior to the court’s 2013 and 2014 concluding orders [made under authority of N.D.C.C. § 30.1-21-01], Rodney only sought affirmative relief in the nature of supervised administration and summary judgment, neither pleading determined frivolous by any court. After the remand of the appeal in Estate of Arline Hogen, *supra.*, Rodney requested the lower court to restrain Steven, believing his administrative powers terminated under the provisions of N.D.C.C. § 30.1-17-10. Rodney further asked this court of law to vacate its January, 2016, ex parte order for supervised administration – entered without an meaningful opportunity for Rodney to be heard. None of his prior “claims for relief” were frivolous, nor were they determined to frivolous; none would justify shifting to Rodney the massive amounts the Ohnstad Twichell is billing.

[¶75] C. A court’s inherent power will not justify the punishment imposed.

[¶76] The lower court’s “inherent” powers would not justify the shifting of attorney fees

to Rodney. Rodney's constitutional right to alienate his inherited real property, vested at the moment of his mother's death, and is protected by the Fourteenth Amendment to the Constitution of the United States of America. Rodney's act of transferring an interest in real property would not justify the court to shift post-remand attorney fees to Rodney. A Lis Pendens is a privileged communication serving to provide constructive notice to subsequent purchasers of the pendency of an action related to real property so that they can be bound upon the final judgment. Boehm v. Long, 172 N.W. 862 (N.D. 1919). It is a *communication* made in a "proceeding authorized by law" and therefore is a [absolutely or conditionally] privileged communication under N.D.C.C. § 14-02-05(2). See also, Havilah Real Property Services, LLC v. VLK, LLC, 108 A3d 334, 345-346 (D.C. 2015). Rodney's filing of a Lis Pendens involves activity protected by the First Amendment [freedom of speech and right to petition the government]. The lower court's order of February, 2016, restraining Rodney from interfering with the personal representative's control of Rodney's real property is not specific enough to be considered a prior restraint on Rodney's First Amendment rights. See, *Near v. Minnesota ex rel Olson*, 283 U.S. 697 (1931), and its progeny. Trying to preserve his family's interest in his inherited real property, Rodney filed his Lis Pendens so that no one could claim to be acting in "good faith" with the personal representative within the meaning of N.D.C.C. § 30.1-18-14. The Lis Pendens was intended to help preserve Rodney's statutory right to void Steven's actions. N.D.C.C. § 30.1-18-13. Neither the Lis Pendens, nor the transfer of an interest in Rodney's inherited lands, would justify the lower court's shifting of all post-remand attorney fees to Rodney under any claimed inherent powers.

[¶77] Typically, a court's inherent power to shift attorney fees to one litigant is limited to an amount of attorney "fees incurred because of, and solely because of, the misconduct at issue ...". *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1189 (2017). Shifting all post-remand attorney fees to Rodney is a form of punishment. Due process is violated when one is punished for exercising a right protected by the Constitution of the United States of America or the Constitution of North Dakota. *U.S. v. Goodwin*, 457 U.S. 368, 372 (1982); *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); and *State v. Yagow*, 423 N.W.2d 498 (N.D. 1988). No court should countenance a monetary penalty [attorney fees] be placed upon a litigant for exercising a right protected by the Constitution. *Milewski v. Town of Dover*, 899 N.W.2d 303, 327 (Wis. 2017). Rodney suffers irreparable injury when he loses his First Amendment rights, even for minimal periods of time. *Elrod v. Burns*, 427 U. S. 347, 373 (1976).

[¶78] D. Conflict of interest precludes payment of attorney fees by Rodney or the Estate.

[¶79] The Ohnstad Twichell law firm has a substantial conflict of interest precluding attorney fees from the estate, or Rodney. Steven's probate strategy, through Ohnstad Twichell, was designed to solely promote Steven's selfish motives of obtaining a greater share of the real property while distributing to Rodney a specious "Right to Retainer". Litigation designed to promote only Steven's selfish interests cannot be recovered by Steven under N.D.C.C. § 30.1-18-20. Under such circumstances, neither Steven, nor his attorneys' fees for his attorneys' services should be shifted to Rodney, or to the Arline Hogen Estate, for such attorney fees were rendered solely on behalf of Steven personally, and for his own

self-serving motives. See, Raszler v. Raszler, 81 N.W.2d 120, 123 (N.D. 1957); Sturdevant v. Sturdevant, 340 N.W.2d 888, 892-893 (N.D. 1983); Coulter v. Coulter, 328 N.W.2d 232, 238 (N.D.1982); and Matter of Estate of Rohrich, 496 N.W.2d 566, 571 (N.D. 1993). Steven's disloyalty to his mother's Will's directions for an equal inheritance between two (2) brothers should have precluded any award of attorney fees. See, In re Estate of Wallace, 829 S.W.2d 696 (Tenn. Ct. App. 1992); Ray v. National Health Investors, Inc., 280 Ga. App. 44, 633 S.E.2d 388 (2006); and In re Estate of Stowell, 595 A.2d 1022 (Me. 1991). Ohnstad Twichell, as lawyers/fiduciaries representing the Estate, have undertaken a duty of loyalty to the probated Will, and a duty of impartiality to all devisees. In re Estate of Fogelman, 197 Ariz. 1172, ¶ 17, 3 P.3d 1172 (2000); and In re Estate of Wallace, 829 S.W.2d 696 (Tenn. Ct. App. 1992). When Ohnstad Twichell chose to simultaneously represent Steven's individual interests, altering the Will's demand for equal and timely distribution, Ohnstad Twichell breached its ethical duties without notice to, and without consent of Rodney, and should be denied any of the fees it sought. In re Estate of McCool, 131 N.H. 340, 351, 553 A.2d 761 (1988); In re Estate of Watson, 5 Neb.App. 184, 557 N.W.2d 38 (1996).

[¶80] E. Untimely submission of attorney fees.

[¶81] Although the lower court's April 3, 2017, order authorized a shifting of attorney fees to Rodney, it did not make a determination of the amount of attorney fees. Steven, or his attorneys, failed to bring a motion for the amount of the attorney fees with 21 days of the April 3, 2017, order, as required by N.D.R.Civ.P. 54(e)(3). The failure of Steven, or his attorneys, to abide by the procedural rules to recover attorney fees, should have precluded an award of attorney fees.

[¶82] Point 3. Post remand attorney fees were subject to the “American Rule.”

[¶83] The lower court erred when it did not apply the “American Rule” so as to require Steven and Rodney to each pay his own respective attorney fees for all issues that arise after the concluding orders of 2013-2014. See, Strand v. Cass County, 2008 ND 149, ¶ 9, 753 N.W.2d 872, for the “American Rule”. All attorney fees, incurred by Steven since Rodney’s first appeal, involved *controversies created by Steven to advance his belief he was entitled to disproportionate distribution of lands*, despite the terms of Arline’s Will. Steven, as a personal representative, should not be able to obtain attorney fees from the estate when the controversy over the estate’s distribution was created by Steven to promote his desired disproportionate distribution, and not for the benefit of the estate as a whole. Matter of Estate of Rohrich, 496 N.W.2d 566 (N.D. 1993).

[¶84] Point 4. Application of the claimed “right to retainer” to the law and facts.

[¶85] Assuming, *arguendo*, the personal representative may claim a right to possession of land after the 2013-2014 concluding orders, the amount for the post-remand right of retainer should be zero (\$0.00) dollars. The personal representative was not in possession of the Cass County land for crop years 2013 and 2014, and cannot claim and has no claim to rents from the land nor claim to Rodney’s labors or net profits. For 2016, the claimed retainer should be in the amount of zero (\$0.00) dollars – Rodney has paid mortgage payments that exceed the claimed rent. App., ps. 268-277.

[¶86] Assuming, *arguendo*, the determined retainer, for 2007 through 2013 crop years was not distributed in 2013/2014 [and now barred in its entirety], then the claimed retainer should have been revalued as of July 2018 - Steven’s now claimed “date of distribution” [see,

N.D.C.C. § 30.1-20-06], and limited to only crop years 2012 (\$16,722.00) and 2013 (\$21,477.00), for all other crop years are barred by N.D.C.C. § 28-01-16. Rodney should then be credited for mortgage payments he made [even Steven's share of the obligations] while Steven collected Barnes county rents without paying any mortgage payments. Viewed as an offset, the retainer against Rodney should be zero (\$0.00) dollars for 2007 through 2013 crop years.

[¶87] Point 5. Misapplication of N.D.C.C. § 30.1-18-13.

[¶88] The lower court erred in rejecting the Hogens' declaration [App., ps. 336 -371], made under N.D.C.C. § 30.1-18-13, that voided all of Steven's post-estate closing transactions relating to Rodney's share of lands inherited by Rodney, and owned collectively by the Hogens [two life estate(s) and one remainderman's interest]. The provisions of N.D.C.C. § 30.1-18-13 provide to all interested persons a remedy of "voiding", at their election, any transaction of a personal representative in which a personal representative has a substantial conflict of interest. Broten v. Broten, 2015 ND 127, §19, 63 N.W.2d 902.

[¶89] Arline's Will disposes of the lands to Steven and Rodney equally. The disproportionate allocation of lands, and then subsequent deed to himself as sole owner, over the objections of Rodney and "voiding" powers of the Hogens, involves a substantial conflict of interest transaction. Broten, ¶ 18. As a matter of law, Steven had duties to distribute to protect, preserve and distribute the estate's lands "in accordance with the terms of any probated and effective will ... expeditiously and efficiently as is consistent with the best interests of the estate." N.D.C.C. § 30.1-18-03(1); N.D.C.C. § 30.1-18-09. Steven's allocation and distribution conflicts with his duty of loyalty to Arline's will, and is voidable

by the Hogens by statutory right – a right equal to any of the statutory powers of a personal representative.

[¶90] The lower court erred when concluding [App., p. 433] that the Hogens have failed to establish a conflict of interest situation, especially when the lower court refused to provide the Hogens an evidentiary hearing. Its erroneous conclusion allows Steven to escape his duty of loyalty to Arline’s Will. It also errs when it determined Susan and Marby are not persons interested in the estate. Such error stems from the lower court’s misunderstanding of devolvement. Tr. of 03/02/2017, ps. 10-17.

[¶91] Due to a recorded Lis Pendens, neither Tulip Acres, LLLP, nor the Triebolds can be considered “good faith purchasers” of the lands. The Hogens have never voluntarily released any Lis Pendens. Despite the probate court’s order [an interlocutory order] releasing the Lis Pendens, such remains constructive notice to any pendent lite purchaser of the controversy. See, Salas v. Bolagh, 106 N.M. 613, ¶ 12, 747 P.2d 259 (1987); Kokoricha v. Estate of Keiner, 148 N.M. 322, 236 P.3d 41(2010); and N.D.C.C. § 28-05-08. The Hogens’ recorded deed, and the act of recording the Lis Pendens, precluded anyone dealing with Steven to claim they acted in good faith for there was not an “absence of all information” on their part. Further, if the interlocutory release of Rodney’s Lis Pendens could have affected Rodney’s substantive rights, this court should have heard Rodney’s appeal in Supreme Court No. 20170140. See, N.D.C.C. § 28-27-02(2)(3) & (5).

[¶92]

CONCLUSION

[¶93] Upon sworn petition of Steven, the estate of Arline Hogen achieved full settlement under N.D.C.C. § 30.1-21-01 establishing the law of the case, and judicial pronouncements

mandated be followed. The lower court blindly followed the unlawful lead of Steven and his attorneys, and incredibly, exponentially exploded into punishment when Rodney merely posed jurisdictional questions and procedural objections – fully protected advocacy. The Supreme Court earlier dismissed Rodney’s “interlocutory” appeal; the actions of Steven, his attorneys, and the District Judge have now adversely affected Rodney’s substantive rights granted by Arline Hogen’s Will, and the substantive rights of his transferees, Susan and Marby. The substantive rights, now denied the Hogens, were fully settled by statutory procedure and this Court’s prior judgment. The Hogens demand redress of their grievances.

[¶94] Respectfully submitted this 15th day of November, 2018.

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[¶95]

Addendum of North Dakota Statutes & Rules

N.D.C.C. § 14-02-05:

§ 14-02-05. Privileged communications.

A privileged communication is one made:

1. In the proper discharge of an official duty;
2. In any legislative or judicial proceeding or in any other proceeding authorized by law;
3. In a communication, without malice, to a person interested therein by one who also is interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information; and
4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

In the cases provided for in subsections 3 and 4, malice is not inferred from the communication or publication.

Source: Civ. C. 1877, § 31; R.C. 1895, § 2717; R.C. 1899, § 2717; R.C. 1905, § 4029; C.L. 1913, § 4354; R.C. 1943, § 14-0205.

N.D.C.C. § 28-27-02:

§ 28-27-02. What orders reviewable.

The following orders when made by the court may be carried to the supreme court:

1. An order affecting a substantial right made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
2. A final order affecting a substantial right made in special proceedings or upon a summary application in an action after judgment;
3. An order which grants, refuses, continues, or modifies a provisional remedy, or grants, refuses, modifies, or dissolves an injunction or refuses to modify or dissolve an injunction, whether such injunction was issued in an action or special proceeding or pursuant to the provisions of section 35-22-04, or which sets aside or dismisses a writ of attachment for irregularity;
4. An order which grants or refuses a new trial or which sustains a demurrer;
5. An order which involves the merits of an action or some part thereof;
6. An order for judgment on application therefor on account of the frivolousness of a demurrer, answer, or reply; or
7. An order made by the district court or judge thereof without notice is not

appealable, but an order made by the district court after a hearing is had upon notice which vacates or refuses to set aside an order previously made without notice may be appealed to the supreme court when by the provisions of this chapter an appeal might have been taken from such order so made without notice, had the same been made upon notice.

Credits

S.L. 1887, ch. 20, § 23; S.L. 1891, ch. 120, § 24; S.L. 1893, ch. 83, § 1; S.L. 1907, ch. 79, § 1.

Codifications: R.C. 1895, § 5626; R.C. 1899, § 5626; R.C. 1905, § 7225; C.L. 1913, § 7841; R.C. 1943, § 28-2702.

N.D.C.C. § 28-01-16:

§ 28-01-16. Actions having six-year limitations.

The following actions must be commenced within six years after the claim for relief has accrued:

1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of sections 28-01-15 and 41-02-104.
2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
3. An action for trespass upon real property.
4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided.
6. An action for relief on the ground of fraud in all cases both at law and in equity, the claim for relief in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

Credits: S.L. 1903, ch. 2, § 1; S.L. 1935, ch. 233, § 1; S.L. 1965, ch. 296, § 9; S.L. 1977, ch. 279, § 1; S.L. 1985, ch. 82, § 49.

Codifications: C. Civ. P. 1877, § 54; R.C. 1895, § 5201; R.C. 1899, § 5201; R.C. 1905, § 6787; C.L. 1913, § 7375; R.C. 1943, § 28-0116.

N.D.C.C. § 28-05-08:

§ 28-05-08. Cancellation of lis pendens.

The court in which the action was commenced, at any time, on application of any person aggrieved and on good cause shown and on such notice as directed or approved by

the court, may order the notice authorized by section 28-05-07 to be canceled of record in whole or in part by the recorder of any county in whose office the same may have been filed for record, and such cancellation must be made by an endorsement to that effect on the margin of the record which shall refer to the order. Such cancellation, in like manner, may be made by the recorder upon a written request, directing such cancellation, signed by the party or the attorney of the party who caused such notice to be filed. Such notice is also canceled by the entry of a final judgment in the action if no appeal has been taken from such judgment within the time provided by law

Credits

S.L. 1885, ch. 117, § 1; S.L. 1887, ch. 22, § 1; S.L. 1971, ch. 309, § 1; S.L. 2001, ch. 120, § 1.

Codifications: C. Civ. P. 1877, § 101; R.C. 1895, § 5251; R.C. 1899, § 5251; R.C. 1905, § 6837; C.L. 1913, § 7425; R.C. 1943, § 28-0508.

N.D.C.C. § 28-26-01:

§ 28-26-01. Attorney's fees by agreement--Exceptions--Awarding of costs and attorney's fees to prevailing party.

1. Except as provided in subsection 2, the amount of fees of attorneys in civil actions must be left to the agreement, express or implied, of the parties.
2. In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of the good faith of the attorney or party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in that person's favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good-faith argument for an extension, modification, or reversal of the existing law.

Credits

C. Civ. P. 1877, § 377; S.L. 1883, ch. 55, § 1; R.C. 1895, § 5574; S.L. 1899, ch. 3, § 1; R.C. 1899, § 5574; R.C. 1905, § 7173; C.L. 1913, § 7789; R.C. 1943, § 28-2601; S.L. 1977, ch. 283, § 1; S.L. 1979, ch. 372, § 1; S.L. 1987, ch. 387, § 1.

N.D.C.C. § 30.1-01-06:

§ 30.1-01-06. (1-201) General definitions. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

* * *

7. “Claims”, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

* * *

15. “Estate” includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

* * *

20. “Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

* * *

26. “Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

* * *

42. “Petition” means a written request to the court for an order after notice.
43. “Proceeding” includes action at law and suit in equity.
44. “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

* * *

49. “Settlement”, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

* * *

Credits

S.L. 1973, ch. 257, § 1; S.L. 1981, ch. 320, § 76; S.L. 1983, ch. 313, § 5; S.L. 1985, ch. 369, § 2; S.L. 1985, ch. 508, § 23; S.L. 1991, ch. 54, § 18; S.L. 1991, ch. 326, § 115; S.L. 1991,

ch. 595, § 1; S.L. 1993, ch. 54, § 106; S.L. 1993, ch. 334, § 2; S.L. 1995, ch. 322, §§ 1, 2, 27; S.L. 2009, ch. 283, § 1, eff. Aug. 1, 2009; S.L. 2017, ch. 230 (H.B. 1095), § 1, eff. Aug. 1, 201

N.D.C.C. § 30.1-03-01:

§ 30.1-03-01. (1-401) Notice--Method and time of giving.

1. If notice of a hearing on any petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the interested person's attorney if the interested person has appeared by attorney or requested that notice be sent to the interested person's attorney. Notice shall be given:
 - a. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified or ordinary first-class mail addressed to the person being notified at the post-office address given in that person's demand for notice, if any, or at that person's office or place of residence, if known;
 - b. By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; or
 - c. If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.
2. The court for good cause shown may provide for a different method or time of giving notice for any hearing.
3. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-17-10:

§ 30.1-17-10. (3-610). Termination of appointment--Voluntary.

1. An appointment of a personal representative terminates as provided in section 30.1-21-03, one year after the filing of a closing statement.
2. An order closing an estate as provided in section 30.1-21-01 or 30.1-21-02 terminates an appointment of a personal representative.
3. A personal representative may resign the position by filing a written statement of resignation with the court after giving at least fifteen days' written notice to the persons known to be interested in the estate. If no one applies or petitions for

appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor representative.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-18-03:

§ 30.1-18-03. (3-703). General duties--Relation and liability to persons interested in estate--Standing to sue.

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

* * *

Credits

S.L. 1973, ch. 257, § 1; S.L. 1999, ch. 294, § 5; S.L. 2007, ch. 549, § 6, eff. Aug. 1, 2007.

N.D.C.C. § 30.1-18-09:

§ 30.1-18-09. (3-709) Duty of personal representative--Possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title thereto.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-18-13:

§ 30.1-18-13. (3-713) Sale, encumbrance, or transaction involving conflict of interest--Voidable--Exceptions.

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent, or attorney, or any corporation, limited liability company, or trust in which the personal representative has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

1. The will or a contract entered into by the decedent expressly authorized the transaction; or
2. The transaction is approved by the court after notice to interested persons

Credits

S.L. 1973, ch. 257, § 1; S.L. 1993, ch. 54, § 106.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-18-14:

§ 30.1-18-14. (3-714) Persons dealing with personal representative--Protection.

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 30.1-16-04, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-18-20:

§ 30.1-18-20. (3-720) Expenses in estate litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney's fees incurred.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-19-03:

§ 30.1-19-03. (3-803) Limitations on presentation of claims.

* * *

2. All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - a. A claim based on a contract with the personal representative, within four months after performance by the personal representative is due.
 - b. Any other claim, within three months after it arises.

* * *

Credits

S.L. 1973, ch. 257, § 1; S.L. 1977, ch. 298, § 3; S.L. 1989, ch. 404, § 3; S.L. 1999, ch. 294, § 6.

N.D.C.C. § 30.1-20-11

§ 30.1-20-11. (3-911) Partition for purpose of distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate,

to make partition. After notice to the interested heirs or devisees, the district court shall partition the property in the same manner as provided by chapter 32-16. The district court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-21-01:

§ 30.1-21-01. (3-1001) Formal proceedings terminating administration--Testate or intestate--Order of general protection.

1. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and, after receiving satisfactory evidence of payment of any estate tax due, directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.
2. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

Credits

S.L. 1973, ch. 257, § 1; S.L. 1975, ch. 290, § 9.

N.D.C.C. § 30.1-21-06:

§ 30.1-21-06. (3-1006) Limitations on actions and proceedings against distributees.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or unless otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

1. Three years after the decedent's death.
2. One year after the time of distribution thereof.

This section does not bar an action to recover property or value received as the result of fraud.

Credits

S.L. 1973, ch. 257, § 1.

N.D.C.C. § 30.1-21-08:

§ 30.1-21-08. (3-1008) Subsequent administration--Fee.

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. Any person filing a petition under this section shall pay to the clerk of district court a filing fee as prescribed in section 27-05.2-03. If a new appointment is made, unless the court orders otherwise, the provisions of this title apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.

Credits

S.L. 1973, ch. 257, § 1; S.L. 1999, ch. 107, § 5.

N.D.C.C. § 32-16-04:

§ 32-16-04. Lis pendens required.

Immediately after filing the complaint in the district court, the plaintiff must record in the office of the recorder of the county, or of the several counties in which the property is situated, a notice of the pendency of the action, containing the names of the parties, so far as

known, the object of the action, and a description of the property to be affected thereby. From the time of filing such notice for record, all persons shall be deemed to have notice of the pendency of the action.

Credits

S.L. 2001, ch. 120, § 1.

Codifications: C. Civ. P. 1877, § 551; R.C. 1895, § 5798; R.C. 1899, § 5798; R.C. 1905, § 7407; C.L. 1913, § 8027; R.C. 1943, § 32-1604.NDCC 32-16-04, ND ST 32-16-04.

N.D.C.C. § 32-16-20:

§ 32-16-20. How proceeds of encumbered property applied.

The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

1. To pay its just proportion of the general costs of the action.
2. To pay the costs of the reference.
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due, and the amount due to be verified by affidavit at the time of payment.
4. The residue among the owners of the property sold, according to their respective shares therein.

Codifications: C. Civ. P. 1877, § 567; R.C. 1895, § 5814; R.C. 1899, § 5814; R.C. 1905, § 7423; C.L. 1913, § 8043; R.C. 1943, § 32-1620.

N.D.C.C. § 32-16-23:

§ 32-16-23. Part of action continued.

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court, if necessary, may require such parties to present the facts or law in the controversy by pleading as in an original action.

Codifications: C. Civ. P. 1877, § 570; R.C. 1895, § 5817; R.C. 1899, § 5817; R.C. 1905, § 7426; C.L. 1913, § 8046; R.C. 1943, § 32-1623.NDCC 32-16-23, ND ST 32-16-23.NDCC,

N.D.C.C. § 32-16-30:

§ 32-16-30. Value of future estates settled by court.

In all cases of sales, when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportionate value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over in such manner as will protect the rights and interests of the parties.

Codifications: C. Civ. P. 1877, § 577; R.C. 1895, § 5824; R.C. 1899, § 5824; R.C. 1905, § 7434; C.L. 1913, § 8053; R.C. 1943, § 32-1630.

NDCC 32-16-30, ND ST 32-16-30

N.D.C.C. § 32-16-35

§ 32-16-35. Interested party may apply share on purchase price

When a party entitled to a share of the property, or an encumbrancer entitled to have that encumbrancer's lien paid out of the sale, becomes a purchaser, the referees may take their receipt for so much of the proceeds of the sale as belongs to them.

Codifications: C. Civ. P. 1877, § 582; R.C. 1895, § 5829; R.C. 1899, § 5829; R.C. 1905, § 7438; C.L. 1913, § 8058; R.C. 1943, § 32-1635. NDCC 32-16-35, ND ST 32-16-35

N.D.C.C. § 59-04.2-24

§ 59-04.2-24. (501) Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision b or c of subsection 2 of section 59-04.2-04 applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.
2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.
3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.
4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;
REPRESENTATIONS TO COURT; SANCTIONS**

(a) Signature.

(1) **In General.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is self-represented. The paper must state the signer's address, electronic mail address for electronic service, and telephone number. If the signer is an attorney, the paper must contain the attorney's State Board of Law Examiners identification number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(2) **Notarization Not Required.** Unless specifically required by court rule, a document filed with the court in a civil action is not required to be notarized. When any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, subscribed by the maker as true under penalty of perjury, and dated, in substantially the following form: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or are

reasonably based on belief or a lack of information.

(c) Sanctions.

(1) **In General.** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) **Motion for Sanctions.** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file an answer brief and other supporting papers. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) **On the Court's Initiative.** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) **Nature of a Sanction.** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) **Limitations on Monetary Sanctions.** The court must not impose a monetary sanction:

- (A) against a represented party for violating Rule 11(b)(2); or
- (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(e) Limited Representation.

(1) **Preparation of Pleadings.** An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may prepare pleadings, briefs, and other documents to be filed with the court by a self-represented party. The attorney's preparation of pleadings, briefs, or other documents does not constitute an appearance by the attorney in the case and no notice under Rule 11(e)(2) is required. Any filing prepared under this paragraph must be signed by

the party designated as "self-represented."

- (2) Limited Appearance.
- (A) In General. An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may make a "limited appearance" on behalf of an otherwise self-represented party involved in a proceeding to which these rules apply.
- (B) Notice. An attorney who makes a limited appearance on behalf of an otherwise self-represented party must serve a notice of limited appearance on each party involved in the matter. The notice must state precisely the scope of the limited appearance. An attorney who seeks to act beyond the stated scope of the limited appearance must serve an amended notice of limited appearance. Upon completion of the limited appearance, the attorney must file and serve a "Certificate of Completion of Limited Appearance" as required by N.D.R.Ct. 11.2(d).
- (C) Filing. If the action is filed, the party who received assistance of an attorney on a limited basis must file the notice of limited appearance with the court.
- (3) Scope of Rule. The requirements of this rule apply to every pleading, written motion and other paper signed by an attorney acting within the scope of a limited representation.

RULE 54. JUDGMENT; COSTS

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) **Judgment on Multiple Claims or Involving Multiple Parties.** If an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) **Demand for Judgment; Relief to be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) **Death Before Judgment.** If a party dies after a verdict or decision on any issue of fact and before judgment, the court may still render judgment. That judgment is not a lien

on the real property of the deceased party, but is payable as provided in N.D.C.C. ch. 30.1-19.

(e) Costs; Objections; Attorneys' Fees.

(1) **Costs Other than Attorneys' Fees.** Costs and disbursements must be allowed as provided by statute. A party awarded costs and disbursements must submit a detailed, verified statement to the clerk. Upon receipt of the statement, the clerk must allow those costs and disbursements and insert them in the judgment. A copy of the statement must accompany the notice of entry of judgment.

(2) **Objections to Costs.** Objections must be served and filed with the clerk within 14 days after notice of entry of judgment or within a longer time fixed by court order within the 14 days. The grounds for objections must be specified. If objections are filed, the clerk must promptly submit them to the judge who ordered the judgment. The court by ex parte order must fix a time for hearing the objections. Unless otherwise directed by the court, the parties may waive the right to a hearing and submit written argument instead within a time specified by the court.

(3) **Attorneys' Fees.** A claim for attorneys' fees and related nontaxable expenses not determined by the judgment must be made by motion. The motion must be served and filed within 21 days after notice of entry of judgment. The trial court may decide the motion even after an appeal is filed.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of the Estate of
Arline H. Hogen, Deceased

Steven C. Hogen, Personal Representative,

Petitioner and Appellee,

vs.

Affidavit Of Service By Mail

Supreme Court No. 20180325

Civil Probate No. 09-07-P-100
(Cass County District Court)

Rodney Hogen,

Respondent and Appellant,

Susan Hogen and Marby Hogen,

Interested Persons and Appellants,

and

John H. Triebold, Alan N. Triebold, and
Tulip Acres, LLLP,

Interested Persons and Appellees.

State of North Dakota
County of Cass

[¶1] Pat Doty, being first duly sworn on oath, deposes and says: Affiant is a resident of the City of Fargo, North Dakota, and over the age of eighteen years, and not a party to the above entitled matter.

[¶2] On the 15th day of November, 2018, Affiant deposited in the United States Post Office at Fargo, North Dakota, a true and correct copy of the following documents in the above entitled action: BRIEF OF APPELLANTS and APPENDIX TO BRIEF OF APPELLANTS.

[¶3] The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

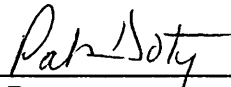
Robert G. Hoy
Sara K. Sorenson
444 Sheyenne Street, Suite 102
P.O. Box 458
West Fargo, ND 58078-0458

John H. Triebold
3336 123rd Avenue SE
Oriska, ND 58063-9753

Alan N. Triebold
3336 123rd Avenue SE
Oriska, ND 58063-9753

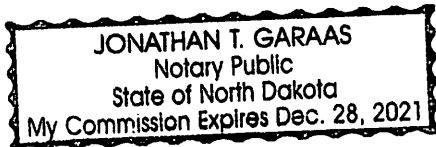
Tulip Acres, LLLP
c/o Max Johnson
4425 168th Avenue SE
Horace, ND 58047-9791

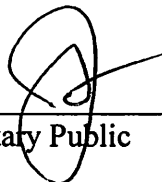
[¶4] To the best of Affiant's knowledge, the address above given was the actual post office address of the party intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



Pat Doty

Subscribed and sworn to before me this 15th day of November, 2018.





Notary Public