

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORIGINAL

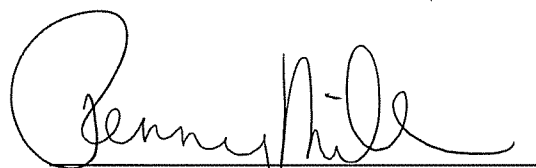
ORDER OF ADOPTION
Supreme Court No. 20080201

Proposed Amendments to the North Dakota Rules of Civil Procedure, North Dakota Rules of Criminal Procedure, North Dakota Rules of Appellate Procedure, North Dakota Rules of Court, and North Dakota Supreme Court Administrative Rules and Orders

On August 19, 2008, the Joint Procedure Committee filed a Petition with proposed amendments to the North Dakota Rules of Civil Procedure 5 (Service and Filing of Pleadings and Other Papers), 6 (Time), 11 (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions), 40 (Assignment of Cases for Trial), 45 (Subpoena); Criminal Procedure 1 (Scope and Exceptions), 32.2 (Pretrial Diversion), Form 9 (Appendix "A"), Form 9A (Appendix "A" without sex offender conditions); Appellate Procedure 2.2 (Termination of Parental Rights - Expedited Appeals); Rules of Court 2.2 (Facsimile Transmission), 3.1 (Pleadings), 3.4 (Privacy Protection for Filings Made With the Court), 11.2 (Withdrawal of Attorneys); Supreme Court Administrative Rule 41 (Access to Court Records); and Supreme Court Administrative Order 16 (Electronic Filing Pilot Project for the District Courts). Subsequently, on October 6, 2008, the Joint Procedure Committee filed supplemental proposed amendments to Supreme Court Administrative Rule 41. A hearing was held on October 23, 2008, in the Ralph J. Erickstad Courtroom of the Supreme Court. At that time, any written comments were submitted to the Court. The Court, on its own, also considered amendments to Rule of Appellate Procedure 14 (Identity Protection). The Court considered the matter, and

ORDERED, that the proposed amendments to North Dakota Rules of Civil Procedure 5, 6, 11, 40, 45; Criminal Procedure 1, 32.2, Form 9, Form 9A; Appellate Procedure 2.2, 14; Rules of Court 2.2, 3.1, 3.4, 11.2; Supreme Court Administrative Rule 41; and Supreme Court Administrative Order 16; as further amended by the Court, are ADOPTED effective March 1, 2009.

The Supreme Court of the State of North Dakota convened December 3, 2008 with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller, Clerk
North Dakota Supreme Court

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service-When required.

(1) In General. Other than service of a summons and complaint under Rule 4, each of the following papers must be served under this rule on every party, unless the rules provide otherwise:

(A) an order, unless the court orders otherwise;

(B) a pleading served after the original summons and complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper; and

(F) every paper filed with the clerk or submitted to the judge.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an answer, claim, or appearance must be made on the person who had custody or possession of the property when it was seized.

(b) Service-How made.

(1) Serving an Attorney. ~~Whenever under these rules service is required or permitted~~
~~to be made upon~~ If a party is represented by an attorney, the service under this rule must be
made upon the attorney unless the court orders service upon the party ~~is ordered by the~~
~~court.~~ If an attorney is providing limited representation under Rule 11(e), service must be
made on the party and on the attorney for matters within the scope of the limited
representation.

(2) Service in General. ~~Service upon the attorney or upon a party must be made by~~
~~delivering a copy to the attorney or party, or by facsimile transmission if available to the~~
~~attorney or party, or by mailing or delivering via third-party commercial carrier a copy to the~~
~~attorney or party at the attorney's or party's last known address or, if no address is known,~~
~~upon order of the court by leaving it with the clerk of the court. Delivery of a copy within this~~
~~rule means:~~

A paper is served under this rule by:

(A) handing it to the attorney or to the party person;

or, (B) leaving it:

(i) at the attorney's or party's person's office with a clerk or other individual person
in charge; or, if there is no one is in charge, leaving it in a conspicuous place therein in the
office; or,

(ii) if the person has no office or the office is closed or the party to be served has no
office, leaving it at the party's person's dwelling or usual place of abode with some individual

43 someone of suitable age and discretion ~~then residing therein~~ who resides there;

44 Service by mail (C) mailing it to the person's last known address, in which event
45 service is complete upon mailing;

46 Service via (D) sending it by a third-party commercial carrier to the person's last
47 known address, in which event service is complete upon deposit of the paper to be served
48 with the commercial carrier; :

49 (E) if no address is known, on order of the court by leaving it with the clerk of court;

50 (F) sending it by electronic means if the person consented in writing, in which event
51 service is complete on transmission, but is not effective if the serving party learns that it did
52 not reach the person to be served; or

53 (G) delivering it by any other means that the person consented to in writing.

54 (c) Service-Numerous defendants. In any action in which there are unusually large
55 numbers of defendants, the court, upon motion or of its own initiative, may order that the
56 service of the pleadings of the defendants and the replies thereto need not be made as
57 between the defendants, and that any cross-claim, counterclaim, or matter constituting an
58 avoidance or affirmative defense contained therein shall be deemed to be denied or avoided
59 by all other parties and that the filing of any such pleading and service thereof upon the
60 plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served
61 upon the parties in such manner and form as the court directs.

62 (d) Filing.

63 (1) The summons and complaint, or other initiating pleading, must be filed before a

subpoena may be issued. The plaintiff shall serve notice of filing the complaint or initiating pleading upon the defendant or respondent. Within a reasonable time after service of the notice of filing the complaint or initiating pleading, the defendant or respondent shall file the answer and notify the plaintiff of the filing. Unless otherwise provided by statute, these rules or by order of the court, all pleadings, affidavits, bonds and other papers in an action must be filed with the clerk at or prior to the time of the filing of the note of issue. A party may not file discovery materials with the clerk unless the materials are to be submitted to the court for disposition of a pending motion, the court orders them to be filed, or a party certifies that the filing is necessary for safekeeping of the papers or exhibits pending completion of the case. A party certifying that safekeeping is necessary shall state the reasons necessary for safekeeping. The clerk shall return all filed depositions, interrogatories, requests for admission, requests for interrogatories, requests for production of documents, and answers and responses thereto, to the filing party upon final disposition of an appeal or, if no appeal is filed, upon expiration of the time for appeal. If the filing party does not claim a filed document within sixty (60) days after being notified to do so, the clerk may dispose of the document as the court by order may direct. The clerk shall take a receipt for all documents returned.

(2) All affidavits, notices and other papers designed to be used upon the hearing of a motion or order to show cause shall be filed at least 24 hours before the hearing unless otherwise directed by the court.

(3) If a party fails to comply with this subdivision, the court, on motion of any party

85 or its own motion, may order the papers to be filed forthwith and if the order is not obeyed,
86 the court may order them to be regarded as stricken and their service to be of no effect.

87 (4) The clerk must not accept for filing any document that adds a party to an action
88 or proceeding without an order of the court or unless under Rule 13 or Rule 14. The clerk
89 shall endorse on the document a notation that the document is rejected for filing under this
90 rule and return the document to the person who tendered it for filing.

91 (e) Removal of pleadings for service. Upon the request of a party filing the same, any
92 original pleading or paper in any civil action or proceeding, which by law is required to be
93 filed in the office of the clerk of court in which such action or proceeding is pending, may
94 be removed from the files for the purpose of serving the same either within or without the
95 state but shall be returned thereto without delay.

96 (f) Proof of service. Proof of service under this rule may be made as provided in Rule
97 4 or by the certificate of an attorney or court personnel showing that service has been made
98 under subdivision (b).

99 EXPLANATORY NOTE

100 Rule 5 was amended effective 1971, July 1, 1981; March 1, 1986; January 1, 1988;
101 March 1, 1990; March 1, 1992, on an emergency basis; March 1, 1994; January 1, 1995;
102 March 1, 1998; March 1, 1999; March 1, 2003; March 1, 2008; March 1, 2009.

103 Rule 5 applies to service of papers other than "process." In contrast, Rule 4 governs
104 civil jurisdiction and service of process. When a statute or rule requiring service does not
105 pertain to service of process, nor require personal service under Rule 4, nor specify how

106 service is to be made, service may be made as provided in Rule 5(b).

107 Subdivision (a) was amended, effective March 1, 2008, to improve organization and
108 to make the subdivision easier to understand.

109 Paragraph (b)(1) was amended, effective March 1, 2009, to make it clear that, when
110 an attorney has served a notice of limited representation under Rule 11(e), service of papers
111 on the attorney is not required except for papers within the scope of the limited
112 representation. Rule 5, Rule 11 and N.D.R.Ct. 11.2, were amended to permit attorneys to
113 assist otherwise unrepresented parties on a limited basis without undertaking full
114 representation of the party.

115 Paragraph (b)(2) was amended, effective March 1, 2009, to provide for service by
116 electronic means and to improve organization. Parties seeking to serve papers by electronic
117 means must consult N.D.Sup.Ct.Admin. Order 16 for electronic service instructions.

118 Subdivision (b) was amended, effective March 1, 1999, to permit service via a third-
119 party commercial carrier as an alternative to the Postal Service. The requirement for a "third-
120 party commercial carrier" means the carrier may not be a party to nor interested in the action,
121 and it must be the regular business of the carrier to make deliveries for profit. A law firm
122 may not act as or provide its own commercial carrier service with service complete upon
123 deposit. In addition, the phrase "commercial carrier" does not include electronic delivery
124 services.

125 Subdivision (f) was amended, effective March 1, 2003, to permit proof of service to
126 be made by court personnel as well as by an attorney. Proof of service may also be made in

127 the same manner as provided by Rule 4(i).

128 Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 18-21;
129 January 24, 2008, pages 2-7; October 11-12, 2007, pages 20-27; April 26-27, 2007, pages
130 19-22; September 27-28, 2001, pages 11-12; April 30-May 1, 1998, page 3; January 29-30,
131 1998, page 18; September 26-27, 1996, pages 16-17, 20; September 23-24, 1993, pages 19-
132 20; April 29-30, 1993, pages 20-21; November 7-8, 1991, page 3; October 25-26, 1990,
133 pages 10-12; April 20, 1989, page 2; December 3, 1987, page 11; May 21-22, 1987, pages
134 17-18; February 19-20, 1987, page 4; September 18-19, 1986, page 8; November 30, 1984,
135 pages 26-27; October 18, 1984, pages 8-11; November 29-30, 1979, page 2; September 20-
136 21, 1979, pages 4-5; Fed.R.Civ.P. 5.

137 Statutes Affected:

138 Superseded: N.D.R.C. 1943 §§ 28-0511, 28-0630, 28-2810, 28-2811, 28-2812, 28-
139 2813, 28-2814, 28-2819, 28-2820, 28-2821, 28-3005, 31-0510.

140 Cross Reference: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction - Process - Service),
141 N.D.R.Civ.P. 45 (Subpoena), and N.D.R.Civ.P. 77 (District Courts and Clerks);
142 N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.Ct. 6.4 (Exhibits), N.D.R.Ct. 7.1
143 (Judgments, Orders and Decrees).

RULE 6. TIME

(a) Computation.

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. Service by facsimile transmission must be completed by 5:00 p.m., receiver's time, on a weekday, which is not a legal holiday, or service is considered made on the following weekday which is not a legal holiday.

(b) Enlargement.

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if a request for enlargement is made before expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 4(e) (7), 52(b), 59(c), (i) and (j), and 60(b), except to the extent and under the conditions stated

22 in them.

23 (c) Unaffected by expiration of term.

24 The period of time provided for the doing of any act or the taking of any proceeding
25 is not affected or limited by the continued existence or expiration of a term of court. The
26 continued existence or expiration of a term of court in no way affects the power of a court
27 to do any act or take any proceeding in any civil action which is pending.

28 (d) For motions--Affidavits.

29 A written motion, other than one which may be heard ex parte, and notice of the
30 motion must be served at least 18 days before the motion may be heard, unless a different
31 period is fixed by rule or court order. A party may apply ex parte for the court to hear a
32 motion sooner than 18 days after service of the motion.

33 (e) Service by mail or commercial carrier.

34 (1) Whenever a party must or may act within a prescribed period after service and
35 service is made by mail or third-party commercial carrier under Rule 5, three days are added
36 after the prescribed period would otherwise expire under N.D.R.Civ.P. 6(a).

37 (2) If service is made by mail or third-party commercial carrier under Rule 4, the
38 prescribed period begins running upon delivery.

39 ~~(3) Service by facsimile transmission is not service by mail or third-party commercial~~
40 ~~carrier for purposes of this rule. For purposes of computation of time, any document~~
41 electronically served must be treated as if it were mailed on the date of transmission.

42 EXPLANATORY NOTE

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Rule 6 was amended, effective 1971; March 1, 1990; on an emergency basis, March 1, 1992; January 1, 1995; March 1, 1997; March 1, 1999; March 1, 2001; March 1, 2004; March 1, 2007; March 1, 2009.

This rule omits the listing of "legal holidays" found in subdivision (a) of the federal rule. See N.D.C.C. ch. 1-03, concerning holidays in North Dakota.

Subdivision (a) was amended, effective March 1, 2001, to extend the period from 7 days to 11 days when intermediate Saturdays, Sundays, and legal holidays are excluded from time computations.

Subdivision (d) was amended, effective March 1, 1997, because Rule 3.2, N.D.R.Ct., governs when papers supporting or opposing a motion must be served. The March 1, 2001 amendment changes from 14 to 18 days when a motion must be served before it may be heard.

Subdivision (e) was amended, effective March 1, 1999, to make the three-day extension for service by mail applicable when service is via commercial carrier. The proof of service must contain the date of mailing or deposit with the commercial carrier.

Subdivision (e) was amended, effective March 1, 2004, to restrict applicability of the three-day extension for service by mail or commercial carrier to items served under Rule 5. The time of service for an item served by mail or commercial carrier under Rule 4 is the time the item is delivered to or refused by the recipient.

Subdivision (e) was amended, effective March 1, 2007, to clarify how to count the three-day extension for service by mail or commercial carrier.

Subdivision (e) was amended, effective March 1, 2009, to provide that a document served by electronic means is treated as if it were mailed on the date of transmission. Service by electronic means includes service by facsimile transmission.

Sources: Joint Procedure Committee Minutes of April 24-25, 2008, page 21; April 27-28, 2006, pages 6-7; January 26, 2006, page 11; January 30-31, 2003, pages 4-6; September 26-27, 2002, pages 15-18; January 27-28, 2000, pages 16-17; September 23-24, 1999, pages 20-21; January 29-30, 1998, page 18; April 25, 1996, pages 8-11; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 14-16 and 20; April 29-30, 1993, page 20; November 7-8, 1991, page 3; October 25-26, 1990, page 12; April 20, 1989, page 2; December 3, 1987, page 11; June 22, 1984, pages 30-31; September 20-21, 1979, pages 5-6; Rule 6, Fed.R.Civ.P.

Statutes Affected:

Superseded: N.D.R.C. 1943 §§ 28-0739, 28-2803, 28-2815, 28-2816, 28-2817, 28-2818, 28-2902, 28-2903, 28-3006.

Cross Reference: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction -- Process -- Service), N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P. 52 (Findings by the Court), N.D.R.Civ.P. 59 (New Trials -- Amendment of Judgments), and N.D.R.Civ.P. 60 (Relief From Judgment or Order); N.D.R.Crim.P. 45 (Time); N.D.R.Ct. 3.2 (Motions).

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

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, must be signed by the party. Each paper must contain the signer's address and telephone number, if any. If the person signing the paper is an attorney, the paper must also contain the attorney's State Board of Law Examiners identification number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper must be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representation to court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying 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 or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or are likely

22 to have evidentiary support after a reasonable opportunity for further investigation or
23 discovery; and

24 (4) the denials of factual contentions are warranted on the evidence or are reasonably
25 based on a lack of information or belief.

26 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court
27 determines that subdivision (b) has been violated, the court may, subject to the conditions
28 stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that
29 have violated subdivision (b) or are responsible for the violation.

30 (1) How initiated.

31 (A) By motion. A motion for sanctions under this rule must be made separately from
32 other motions or requests and must describe the specific conduct alleged to violate
33 subdivision (b). The motion, brief, and any other supporting papers, must be served as
34 provided in Rule 5, but must not be filed with or presented to the court unless, within 21 days
35 after service of the motion (or such other period as the court may prescribe), the challenged
36 paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately
37 corrected. The respondent shall have 10 days after a motion for sanctions is filed to serve and
38 file an answer brief and other supporting papers. If warranted, the court may award to the
39 party prevailing on the motion the reasonable expenses and attorney's fees incurred in
40 presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be
41 held jointly responsible for violations committed by its partners, associates, and employees.

42 (B) On court's initiative. On its own initiative, the court may enter an order describing

the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction; limitations. A sanction imposed for violation of this rule must be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warrant for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery.

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

(e) Limited Representation.

(1) Notice. An attorney who assists an otherwise unrepresented party on a limited basis must serve a notice of limited representation on each party involved in the matter. The notice must state precisely the scope of the limited representation. An attorney who seeks to act beyond the stated scope of the limited representation must serve an amended notice of limited representation. The attorney must also serve a notice of termination of limited representation on each party involved in the matter.

(2) Filing. If the action is filed, the party who received assistance of an attorney on a limited basis must file the notice of limited representation 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.

EXPLANATORY NOTE

Rule 11 was amended, effective March 1, 1986; March 1, 1990; March 1, 1996; March 1, 1997, August 1, 2001; ~~March 1, 2009.~~

Rule 11 governs to the extent Rule 11 and Rule 3.2, N.D.R.Ct., conflict.

Rule 11 was revised, effective March 1, 1996, in response to the 1993 revision of Rule 11, Fed.R.Civ.P. North Dakota's rule differs from the federal rule in the following respects:

1) North Dakota's rule requires attorneys to cite their State Board of Law Examiners identification number when signing papers; and 2) North Dakota's rule does not require allegations or denials to be specifically identified when immediate evidentiary support is lacking.

85 Subdivision (e) was added, effective March 1, 2009, to permit an attorney to file a
86 notice of limited representation indicating an intent to represent a party for one or more
87 matters in a case, but not for all matters. An attorney must also serve a notice of termination
88 of limited representation when the attorney's involvement ends. Rule 5, Rule 11 and
89 N.D.R.Ct. 11.2, were amended to permit attorneys to assist an otherwise unrepresented party
90 on a limited basis without undertaking full representation of the party. Under N.D.R. Prof.
91 Conduct 1.2 (c) a lawyer may limit the scope of the representation if a client consents after
92 consultation.

93 Sources: Joint Procedure Committee Minutes of January 24, 2008, pages 2-7; October
94 11-12, 2007, pages 20-26; September 28-29, 1995, pages 2-3; April 27-28, 1995, pages 3-4;
95 January 26-27, 1995, pages 8-10; September 29-30, 1994, pages 24-26; April 20, 1989, page
96 2; December 3, 1987, page 11; April 26, 1984, pages 25-26; January 20, 1984, pages 16-18;
97 September 20-21, 1979, page 7; Rule 11, FRCivP.

98 Statutes Affected:

99 Superseded: N.D.R.C. 1943 §§ 28-0720, 28-3001.

100 Cross Reference: Rule N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other
101 Papers); N.D.R.Ct. 11.1 (Nonresident Attorneys), N.D.R.Ct. 11.2 (Withdrawal of Attorneys);
102 N.D.R. Prof. Conduct 1.2 (Scope of Representation); N.D.C.C. §§ 28-26-01 (Attorney's Fees
103 by Agreement - Exceptions - Awarding Costs and Attorney's Fees to Prevailing Party), and
104 28-26-31 (Pleadings Not Made in Good Faith).

RULE 40. ASSIGNMENT OF CASES FOR TRIAL

(a) Continuous session of district court.

The district court is in continuous session in each county. Criminal and civil cases will be scheduled for trial in accordance with a calendaring procedure maintained and operated under the direction and supervision of the presiding judge of the district.

(b) [Deleted]

(c) Trial dates.

All contested cases will be assigned trial dates by the trial judge under the direction and supervision of the presiding judge of the district.

(d) Trial date continuances.

No continuance on trial dates will be given unless formally approved by the trial judge scheduled to hear the case. A request to continue a trial must be made within ten days after receipt of notice of trial given by the court. If unavoidable circumstances should arise, the trial judge may consider waiving the ten-day requirement.

(e) Untried cases.

Actions or proceedings that have been pending and filed in which there has been a want of prosecution for more than one year may be dismissed without prejudice by the court on its own motion upon notice or on motion of either party.

EXPLANATORY NOTE

Rule 40 was amended effective July 1, 1981; January 1, 1988; August 1, 2004; March

1, 2008; March 1, 2009.

Rule 40 has the same purpose as Fed.R.Civ.P. 40.

Rule 40 was amended, effective March 1, 2008, to eliminate the note of issue and certificate of readiness requirement. Decisions on placement of cases on the trial calendar are made at Rule 16 scheduling conferences or as otherwise scheduled by the court.

Subdivision (a) provides for continuous session of district court, rather than distinct "terms" of court. The presiding judge is to oversee the calendaring process.

Subdivision (e) provides for dismissal of untried cases after one year of inactivity; ~~rather than after two years, as was the previous rule. Failure to file a Note of Issue and Certificate of Readiness within one year after the filing of the summons and complaint may also result in dismissal.~~

The rule was amended, effective January 1, 1988, to make the rule gender neutral.

Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 21-22; April 26-27, 2007, pages 14-15; September 18-19, 2003, pages 11-18; April 24-25, 2003, pages 26-30; November 7-8, 1991, page 5; October 25-26, 1990, page 16; January 23, 1986, pages 9-12; September 18-19, 1980, pages 13-14; May 29-30, 1980, pages 1-2, 6-11; March 27-28, 1980, pages 3-4; January 17-18, 1980, page 3; November 29-30, 1979, pages 9-10; Rule Fed.R.Civ.P. 40, FRCivP.

Statutes Affected:

Superseded: N.D.R.C. 1943 §§ 28-1207, 28-1208, 28-1212.

Cross Reference: N.D.R.Civ.P. 16 (Pretrial Conferences; Scheduling; Management);

43 N.D.R.Crim.P. 50 (Calendars).

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RULE 45. SUBPOENA

(a) ~~Form; Issuance~~ In General.

(1) Form and Contents.

(A) Requirements. Every subpoena must:

~~(A) (i) state the title of the action, the name of the court in which it is filed, is pending,~~
and its civil-action number; and

~~(B) (ii) command each person to whom it is directed to do the following at a specified~~
~~time and place: attend and give testimony testify; or to produce and permit inspection,~~
copying, testing, or sampling of designated books, documents, electronically stored
information, or tangible things in the that person's possession, custody or control of that
person; ~~or upon order of the court for good cause shown, to~~ permit the inspection of
premises; ~~at a time and place therein specified; and~~

(iii) set out the text of the notice in Rule 45(f).

~~A copy of any court order must be attached to the subpoena.~~

(B) Command to Attend a Deposition; Notice of the Recording Method. A subpoena
commanding attendance at a deposition must state the method for recording the testimony.

(C) Combining or Separating a Command to Produce or Permit Inspection; Specifying
the Form for Electronically Stored Information. A command to produce evidence or to permit
inspection, copying, testing or sampling documents, electronically stored information, or
tangible things or to permit the inspection of premises may be joined with a command to

appear at a trial or hearing or included in a subpoena commanding attendance at a deposition,
hearing or trial or may be issued ~~separately~~ set out in a separate subpoena. A subpoena may
specify the form or forms in which electronically stored information is to be produced.

(D) Command to Produce; Included Obligations. A command in a subpoena to
produce documents, electronically stored information, or tangible things requires the
responding party to permit inspection, copying, testing, or sampling of the materials.

(2) Issued by Whom. ~~A subpoena must be issued by the~~ The clerk under the seal of
~~the court or by an attorney for a party to the action or special proceeding. The subpoena must~~
~~be issued~~ shall issue a subpoena in the name of the court for the county in which the action
is filed. ~~If issued by the clerk, it must be issued signed and sealed but otherwise blank, to a~~
~~party who requests it. and the party requesting the subpoena~~ That party shall complete it
~~before service. If issued by an~~ An attorney for a party ; also may issue a subpoena, the
~~subpoena which must be subscribed in the name of signed by the attorney together~~
~~with, include the attorney's office address and must identify the party for whom the attorney~~
~~appears represents.~~

(3) Subpoena in Out-of-State Action. ~~A subpoena may be issued by the~~

(A) In General. The clerk; may issue a subpoena under seal of the court to a party
involved in a civil action pending in another state if:

(i) ~~to an~~ the party's attorney representing a party in a civil action pending in another
state upon filing files proof of service of notice under subdivision Rule 45 (b)(2); or

(ii) ~~to a~~ the party in a civil action pending in another state upon filing files a letter of

request from a foreign court.

(B) Requirements. The subpoena must be issued in the name of the court for the county where the subpoena will be served. The subpoena may be used and discovery obtained within this state in the same manner and subject to the same conditions and limitations as if the action were pending within this state. Any dispute regarding the subpoena, or discovery demanded, needing judicial involvement must be submitted to the court for the county where the subpoena issued.

(b) Service; Notice.

(1) Service of Subpoena.

~~(A) Service of a~~ A subpoena ~~upon~~ to a named person must be ~~made by personal~~ service served under Rule 4(d). A subpoena may be served at any place within the state.

~~(B) If a~~ the subpoena requires the person's attendance ~~is commanded~~, fees for one day's attendance, ~~and~~ mileage and travel expense allowed by law must be tendered ~~to the person. A witness~~ If fees, mileage and travel expense are not tendered with the subpoena, the person need not obey a the subpoena ~~if the witness fee and payment for mileage and travel expense are not tendered with the subpoena. The witness fee,~~ Fees, mileage and travel expense ~~are~~ need not ~~required to be tendered; if the witness fee, mileage and travel expense~~ they are to be paid by the state or a political subdivision.

(2) Service of Notices.

~~(A) Service of a notice to take a deposition as provided in Rules 30(b) and 31(a) is a prerequisite for the issuance of a subpoena that~~ Notice of Deposition. If the subpoena

64 commands a person to attend, give testimony and produce documents, electronically stored
65 information or tangible things at a pretrial deposition, then before the subpoena is served, a
66 notice to take a deposition must be served on each party.

67 (B) Notice of Demand for Production or Inspection. If a deposition notice has not
68 been served, ~~service of a notice for production, inspection, copying, testing, or sampling as~~
69 ~~provided in this rule, is a prerequisite for the issuance of a subpoena that commands~~
70 ~~production, inspection, copying, testing, or sampling~~ and if the subpoena commands the
71 production of documents, electronically stored information, or tangible things or the
72 inspection of premises before trial, then before it is served, a notice of demand for production
73 or inspection must be served on each party. ~~A description of the material to be produced,~~
74 ~~inspected or copied, or a description of the premises to be inspected, must be included in the~~
75 ~~notice or attached to the notice.~~

76 (C) Notice Mandatory Before Service of Subpoena. The notice required by Rule
77 45(b)(2)(A) and (B) must be served on each party ~~in the manner set by~~ under Rule 5(b). ~~A~~
78 ~~copy of the notice and of the proof of service are sufficient authorization for the clerk to issue~~
79 before a subpoena for a pretrial deposition for pretrial production, pretrial inspection, pretrial
80 copying, pretrial testing, or pretrial sampling. The attorney's signature on a subpoena issued
81 ~~by an attorney for a party constitutes certification that notice was~~ of documents, electronically
82 stored information, or tangible things or for the inspection of premises may be served.

83 (c) ~~Protection of~~ Protecting a Person Subject to Subpoenas a Subpoena.

84 (1) Avoiding Undue Burden or Expense; Sanctions. A party or an attorney responsible

85 for the issuance and service of issuing and serving a subpoena shall take reasonable steps to
86 avoid imposing undue burden or expense on a person subject to ~~that~~ the subpoena. The
87 ~~issuing court on behalf of which the subpoena was issued shall~~ must enforce this duty and
88 impose ~~upon the party or attorney in breach of this duty~~ an appropriate sanction, which may
89 include, ~~but is not limited to,~~ lost earnings and a reasonable attorney's fee ~~fees, on a party or~~
90 attorney who fails to comply.

91 (2) Command to Produce Materials or Permit Inspection.

92 (A) Appearance Not Required. A person commanded to produce documents,
93 electronically stored information, or tangible things, ~~and or to permit the inspection and~~
94 ~~copying of designated electronically stored materials, books, papers, documents or tangible~~
95 ~~things or inspection of premises need not appear in person at the place of production ; or~~
96 ~~inspection, copying, testing, or sampling unless also~~ commanded to appear for a deposition,
97 hearing or trial.

98 (B) Objections. ~~Subject to paragraph (d)(2) of this rule, a~~ A person commanded to
99 ~~produce, permit inspection, copying, testing, or sampling before a trial or hearing may object~~
100 ~~in writing. The objection must be received by~~ documents or tangible things or to permit
101 inspection may serve on the party or attorney designated in the subpoena a written objection
102 to inspecting, copying, testing or sampling any or all of the materials or to inspecting the
103 premises or to producing electronically stored information in the form or forms requested.
104 ~~within ten days after receipt of the subpoena. If the time specified in the subpoena for~~
105 ~~compliance is less than ten days, any~~ The objection must be received at least before the

earlier of 24 hours before the time specified for compliance or ten days after the subpoena
is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party serving the
subpoena is not entitled to production, inspection, copying, testing, or sampling except upon
order of the court by which the subpoena was issued. If objection is made, the party serving
the subpoena may, upon notice to the person commanded to produce, permit inspection,
copying, testing, or sampling, may move at any time the issuing court for an order to compel
compelling production; or inspection, copying, testing, or sampling.

An order to compel production, inspection, copying, testing, or sampling(ii) These
acts may be required only as directed in the order, and the order must protect any a person
who is not neither a party or an nor a party's officer of a party from significant expense
resulting from production, inspection, copying, testing, or sampling compliance.

(3) Location.

(A) Resident Witness. A subpoena may require a resident of this state may be required
by subpoena to attend a deposition only in the county where that the person resides, is
employed or transacts business in person, or at such other a convenient place as prescribed
ordered by order of the issuing court. A resident may be required to attend a hearing or trial
any place within this state.

(B) Nonresident Witness. A subpoena may require a nonresident of this state may be
required by subpoena who is served with a subpoena within this state to attend a deposition
hearing or trial in any county of this state. A resident or nonresident may be required to

attend a hearing or trial any place within this state.

(4) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court by which a subpoena was issued shall must quash or modify a subpoena that:

(i) fails to allow a reasonable time for compliance to comply;

(ii) requires attendance beyond the location requirements of paragraph Rule 45 (c)(3) of this rule;

(iii) subjects a person to undue burden; or requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative.

In the circumstances described in Rule 45 (c)(3)(B), the court may, instead of

quashing or modifying a subpoena, order appearance or production under specified
conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot otherwise be met
without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

(A) Documents. A person responding to a subpoena to produce documents shall
produce them as they are kept in the usual ordinary course of business or shall organize and
label them to correspond with to the categories in the demand.

(B) Form for Producing Electronically Stored Information. If a subpoena does not
specify the a form or forms for producing electronically stored information, a the person
responding to a subpoena must produce the information it in a form or forms in which the
person ordinarily maintains it is ordinarily maintained or in a reasonably usable form or
forms that are reasonably usable.

(C) Electronically Stored Information Produced in Only One Form. A The person
responding to a subpoena need not produce the same electronically stored information in
more than one form.

(D) Inaccessible Electronically Stored Information. A The person responding to a
subpoena need not provide discovery of electronically stored information from sources that
the person identifies as not reasonably accessible because of undue burden or cost. On

169 motion to compel discovery or to quash, the person from whom discovery is sought must
170 show that the information sought is not reasonably accessible because of undue burden or
171 cost. If that showing is made, the court may nonetheless order discovery from such sources
172 if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(A).
173 The court may specify conditions for discovery.

174 (2) Claiming Privilege or Protection.

175 (A) Information Withheld. ~~When information subject to a subpoena is withheld on A~~
176 person withholding subpoenaed information under a claim that it is privileged or subject to
177 protection as trial preparation materials, ~~the claim material~~ must:

178 (i) ~~be made expressly~~ make the claim; and

179 (ii) ~~must be supported by a description of~~ describe the nature of the withheld
180 documents, communications, or tangible things ~~not produced that is sufficient to enable the~~
181 ~~demanding party to contest the claim in a manner that, without revealing information itself~~
182 privileged or protected, will enable the parties to assess the claim.

183 (B) Information Produced. If information is produced in response to a subpoena ~~that~~
184 is subject to a claim of privilege or of protection as trial-preparation material, the person
185 making the claim may notify any party that received the information of the claim and the
186 basis for it. After being notified, a receiving party must promptly return, sequester, or
187 destroy the specified information and any copies it has; ~~and may~~ must not use or disclose the
188 information until the claim is resolved; ~~must take reasonable steps to retrieve the information~~
189 if the receiving party disclosed it before being notified; ~~A receiving party and~~ may promptly

190 present the information to the court under seal for a determination of the claim. If the
191 receiving party disclosed the information before being notified, it must take reasonable steps
192 to retrieve it. The person who produced the information must preserve the information until
193 the claim is resolved.

194 (e) Contempt. ~~Failure of any~~ The issuing court may hold in contempt a person without
195 who, having been served, fails without adequate excuse to obey a the subpoena served upon
196 that person may be a contempt of the court from which the subpoena issued. An adequate
197 cause for A nonparty's failure to obey exists when a must be excused if the subpoena
198 purports to require a the nonparty to attend or produce at a place ~~not within~~ outside the limits
199 provided by paragraph (c)(3) of Rule 45(c)(3).

200 (f) Notice. All subpoenas commanding pretrial or prehearing ~~production, inspection,~~
201 ~~copying, testing, or sampling~~ production of documents, electronically stored information, or
202 tangible things or the inspection of premises must contain the following notice:

203 "You may object to this subpoena by sending or delivering a written objection, stating
204 your valid reason, to [Insert the name and address of the party, or attorney representing the
205 party seeking ~~production, inspection, copying, testing, or sampling~~ production of documents,
206 electronically stored information, or tangible things or the inspection of premises]. Any
207 objection must be received within ten days after you receive the subpoena. If the time
208 specified in the subpoena for compliance is less than ten days, any objection must be received
209 at least 24 hours before the time specified for compliance.

210 If you make a timely objection, you do not need to comply with this subpoena unless

the court orders otherwise. You will be notified if the party serving the subpoena seeks a court order compelling compliance with this subpoena. You will then have the opportunity to contest enforcement.

Failure to obey this subpoena, without making a timely objection, and stating a valid reason, may be contempt of court.”

EXPLANATORY NOTE

Rule 45 was amended, effective July 1, 1981; January 1, 1988; January 1, 1995; March 1, 1997; March 1, 1999; March 1, 2008; March 1, 2009.

Rule 45 was revised, effective January 1, 1995, in response to the 1991 federal revision. Significant changes to North Dakota’s rule include the following: (1) An action must be filed before a subpoena may issue; (2) A subpoena may compel a non-party to produce evidence independent of any deposition; (3) A subpoena may compel the inspection of premises in the possession of a non-party ~~upon order of the court for good cause shown;~~ and (4) Notice must be printed on a subpoena advising of the right to object when pretrial or prehearing production or inspection is commanded. The scope of discovery under Rule 26 is not intended to be altered by the revision.

Rule 45 was amended, effective March 1, 2008, in response to the 2006 federal revision. Language was added to the rule to clarify that production of electronically stored materials may be demanded by subpoena and to provide guidance in dealing with requests for electronically stored materials.

232 Rule 45 was amended, effective March 1, 2009, in response to the 2007 amendments
233 to Fed.R.Civ.P. 45. The language and organization of the rule were changed to make the rule
234 more easily understood and to make style and terminology consistent throughout the rules.

235 Subdivision (b) was amended, effective March 1, 2008, to eliminate the requirement
236 for parties to serve a separate notice for production when commanding a person to attend a
237 deposition to give testimony and produce documents or things.

238 Paragraph (b)(2) was amended, effective March 1, 2009, to make it clear that notice
239 must be served on each party in a matter before a subpoena to take testimony or for
240 production is served.

241 Subdivision (f) was amended, effective March 1, 1999, to allow an objection to a
242 subpoena to be sent via a commercial carrier as an alternative to mail.

243 SOURCES: Joint Procedure Committee Minutes of April 24-25, 2008, pages 22-25;
244 September 28-29, 2006, pages 25-27; April 27-28, 2006, pages 14-15; January 29-30, 1998,
245 page 20; January 25-26, 1996, page 20; January 27-28, 1994, pages 11-16; April 29-30, 1993,
246 pages 4-8, 18-20; January 28-29, 1993, pages 2-7; May 21-22, 1987, page 3; February 19-20,
247 1987, pages 3-4; October 30-31, 1980, pages 26-29; November 29-30, 1979, page 12;
248 Fed.R.Civ.P. 45.

249 STATUTES AFFECTED:

250 ~~SUPERSEDED: N.D.R.C. §§ 31-0113, 31-0120, 31-0121, 31-0302, 31-0303, 31-~~
251 ~~0305, 31-0306, 31-0310, 31-0311, 31-0312, 31-0314 (1943); N.D.C.C. § 31-05-22.~~

252 CROSS REFERENCE: N.D.R.Civ.P. 26 (General Provisions Governing Discovery),

253 N.D.R.Civ.P. 30 (Depositions Upon Oral Examination), and N.D.R.Civ.P. 31 (Depositions
254 of Witnesses Upon Written Questions); N.D.R.Crim.P. 17 (Subpoena); N.D.R.Ev. 510
255 (Waiver of Privilege by Voluntary Disclosure).

RULE 1. SCOPE AND EXCEPTIONS

(a) Scope.

These rules govern the practice and procedure in all criminal proceedings in the district courts and, so far as applicable, in all other courts, including prosecutions for violations of municipal ordinances and prosecutions for contempt when punitive sanctions are sought in a nonsummary proceeding.

(b) Excepted proceedings.

(1) Habeas corpus. These rules do not apply to proceedings on any application for a writ of habeas corpus under N.D.C.C. ch. 32-22 or N.D.C.C. ch. 25-03.1 nor to other habeas corpus proceedings authorized by law.

(2) Peace bonds. These rules do not alter the power of magistrates authorized by law to act within the county to take and hold security for the prevention of a public offense or of a district judge to dispose of such peace bonds as provided by N.D.C.C. ch. 29-02. However, these rules apply to procedure under N.D.C.C. ch. 29-02, so far as they are consistent with this chapter.

(3) Commitment proceedings. These rules do not apply to proceedings for determining whether a proposed patient should be ordered committed to the state hospital at Jamestown or any other hospital or school under N.D.C.C. title 25 or other laws.

(4) Other proceedings. These rules do not apply to:

(A) extradition and rendition of fugitives;

(B) forfeiture of property for violation of a statute of this state;

(C) the collection of fines and penalties; or

(D) proceedings under the Uniform Juvenile Court Act, N.D.C.C. ch. 27-20; ~~or~~

~~(E) an action to determine paternity of a child born out of wedlock as provided by~~

~~N.D.C.C. ch. 14-17.~~

EXPLANATORY NOTE

Rule 1 was amended, effective March 1, 1992; March 1, 1994; March 1, 2006; March 1, 2009.

Rule 1 defines the scope of the North Dakota Rules of Criminal Procedure. These rules are designed primarily for the district courts, but are also designed to provide the necessary machinery for all state courts with original jurisdiction. This includes municipal court prosecutions for violations of municipal ordinances. The rules apply to all criminal proceedings, and the term "proceedings" includes all possible steps in the case from its inception to judgment and sentence. Although the vast bulk of statutory procedure is superseded by the rules, statutes containing procedure beyond the scope of a rule, but possibly supplemental to the procedure under a rule, are listed as "considered." (see Table of Statutes Affected).

Subdivision (b) lists proceedings that are not governed by these rules.

Paragraph (b)(1) recognizes that habeas corpus is not a criminal proceeding but an independent and collateral inquiry into the validity of a conviction. See N.D.C.C. chs. 32-22, 25-03.1.

Paragraph (b)(2) provides that these rules shall apply to peace bond procedures when this is consistent with N.D.C.C. ch. 29-02.

Paragraph (b)(3) excludes commitment proceedings from these rules. See N.D.C.C. tit. 25.

Paragraph (b)(4) excludes certain other procedures which are either civil in nature or cannot be classified as either civil or criminal, including:

(1) extradition or rendition of fugitives (N.D.C.C. ch. 29-30.3);

(2) the collection of fines and penalties (see N.D.R.Civ.P. 69); and

(3) proceedings under the Uniform Juvenile Court Act (see N.D.C.C. ch. 27-20); and

~~(4) actions to determine the paternity of a child born out of wedlock (N.D.C.C. ch. 14-17).~~

Paragraph (b)(4) was amended, effective March 1, 2009, to delete a reference to paternity actions, which are wholly civil in nature under N.D.C.C. ch. 14-20.

Rule 1 was amended, effective March 1, 1992. The phrase "by statute and" was deleted to eliminate the conflict that occasionally occurred between rules and statutes. The amendment was not intended to delete any procedural rules in statutes that are not covered by court rules.

Rule 1 was amended, effective March 1, 1994, to provide that these rules apply to nonsummary contempt proceedings when punitive sanctions are sought.

Rule 1 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the

rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules. As part of this amendment, subdivision (b) was transferred to Rule 1 from Rule 54.

Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 11-12; April 28-29, 2005, page 13; April 29-30, 1993, pages 2-3; October 29-30, 1992, page 7; November 7-8, 1991, page 14; January 27-29, 1972, pages 1-3; January 26-27, 1968, page 1; November 17-18, 1967, page 1; Fed.R.Crim.P. 1.

Statutes Affected:

Superseded: N.D.C.C. § 40-18-11.

Considered: N.D.C.C. chs. 14-20, 25-03.1, 25-03.2, 25-03.3, 25-04, 27-20, 29-02, 32-

22

Cross Reference: N.D.R.Civ.P. 69 (Execution); N.D.R.Ct. 8.10 (Writs).

RULE 32.2. PRETRIAL DIVERSION

(a) Agreements Permitted.

(1) Generally. After due consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the defendant may agree that the prosecution will be suspended for a specified period after which it will be dismissed under Rule 32.2(f) on condition that the defendant not commit a felony, misdemeanor or infraction during the period. The agreement must be in writing and signed by the parties. It must state that the defendant waives the right to a speedy trial. It may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the charge.

(2) Additional Conditions. Subject to the court's approval after due consideration of the victim's views and upon a showing of substantial likelihood that a conviction could be obtained and that the benefits to society from rehabilitation outweigh any harm to society from suspending criminal prosecution, the agreement may specify additional conditions to be observed by the defendant during the period, including:

(A) that the defendant not engage in specified activities, conduct, and associations;

(B) that the defendant participate in, and if appropriate successfully complete, a rehabilitation program, which may include treatment, counseling, training, and education;

(C) that the defendant make restitution in a specified manner for harm or loss caused

22 by the crime charged; and

23 (D) that the defendant perform specified community service.

24 (3) Limitations on Agreements. The agreement may not specify a period longer or any
25 condition other than could be imposed upon probation after conviction of the crime charged.

26 (b) Filing of Agreement; Release. Promptly after the agreement is made and approved
27 by the court, the prosecuting attorney shall file the agreement together with a statement that
28 under the agreement the prosecution is suspended for a period specified in the statement.
29 Upon the filing, the defendant must be released under Rule 46 from any custody.

30 (c) Modification of Agreement. Subject to Rule 32.2 (a) and (b) and with the court's
31 approval, the parties by mutual consent may modify the terms of the agreement at any time
32 before its termination.

33 (d) Termination of Agreement; Resumption of Prosecution.

34 The court may order the agreement terminated and the prosecution resumed if, upon
35 motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the
36 court finds:

37 (1) the defendant or defense counsel misrepresented material facts affecting the
38 agreement, if the motion is made within six months after the date of the agreement; or

39 (2) the defendant has committed a violation of the agreement, if the motion is made
40 not later than one month after the expiration of the period of suspension specified in the
41 agreement.

42 (e) Emergency Order: The court by warrant may direct any officer authorized by law

43 to bring the defendant before the court for the hearing of the motion if the court finds from
44 affidavit or testimony:

45 (1) there is probable cause to believe the defendant committed a violation of the
46 agreement; and

47 (2) there is a substantial likelihood that the defendant otherwise will not attend the
48 hearing. In any case the court may issue a summons instead of a warrant to secure the
49 appearance of the defendant at the hearing.

50 (f) Termination of Agreement; Dismissal. If no motion by the prosecuting attorney to
51 terminate the agreement is pending, the agreement is terminated and the complaint,
52 indictment, or information must be dismissed by order of the court 60 days after expiration
53 of the period of suspension specified by the agreement. If such a motion is then pending, the
54 agreement is terminated and the complaint, indictment, or information must be dismissed by
55 order of the court upon entry of a final order denying the motion. Following a dismissal
56 under Rule 32.2(f) the defendant may not be further prosecuted for the offense involved.

57 (g) Modification or Termination and Dismissal upon Defendant's Motion. If, upon
58 motion of the defendant and hearing, the court finds that the prosecuting attorney obtained
59 the defendant's consent to the agreement as a result of a material misrepresentation by a
60 person covered by the prosecuting attorney's obligation under Rule 16, the court may:

61 (1) order appropriate modification of the terms resulting from the misrepresentation;

62 or

63 (2) if the court determines that the interests of justice require, order the agreement

64 terminated, dismiss the prosecution, and bar further prosecution for the offense involved.

65 (h) Pre-Charge Diversion. This rule does not preclude the prosecuting attorney and
66 defendant from agreeing to diversion of a case without court approval if charges are not
67 pending before the court.

68 EXPLANATORY NOTE

69 Rule 32.2 was adopted March 1, 2009.

70 Rule 32.2 is patterned after Minn.R.Crim.P. 27.05.

71 Sources: Joint Procedure Committee Minutes of October 11-12, 2007, pages 15-20;
72 April 26-27, 2007, pages 23-27.

FORM 9. APPENDIX "A"

CONDITIONS FOR SENTENCE TO PROBATION, DEFERRED OR SUSPENDED

SENTENCE IN THE CASE OF

State vs. _____

Criminal Case No. _____ -- _____ County

By Order of the Court:

1. ~~It is a violation of probation for you to~~ You must not violate any federal, tribal, state, county or municipal criminal law or ordinance during the period of probation.

() 2. ~~It is a violation of probation for you to~~ You must not own, purchase, borrow, possess, use or carry any type of firearm, destructive device or dangerous weapon while on probation.

3. ~~It is a violation of probation for you to~~ You must not willfully defraud a urine test administered as a condition of probation.

() 4. You ~~shall~~ must continue your present employment or seek and maintain suitable employment; you may pursue a vocational or educational course of study that will lead to future or better employment.

() 5. ~~It is a violation of probation for you to~~ You must not use or possess any alcoholic beverage, or to enter any liquor, beer or wine establishment during the period of time you are under probation supervision, unless otherwise authorized by your parole/probation officer.

() 6. You ~~shall~~ must refrain from excessive use of alcohol. ~~You understand that~~
any Any excessive use of alcohol or controlled substances will give your parole/probation
officer the right to require you to undergo an outpatient evaluation and abide by the
recommendations of the evaluator. Excessive use of alcohol is presumed if you have an
alcohol concentration of ____ percent or higher.

() 7. ~~It is a violation of probation for you to~~ You must not use or possess any non-
prescribed controlled substance while on probation supervision. ~~It is a violation of probation~~
~~to~~ You must not knowingly associate with users or traffickers in narcotics, marijuana, or
other controlled substances.

() 8. You ~~are~~ must not to associate with any known felons without prior permission
from your parole/probation officer.

() 9. ~~It is a violation of your probation for you to~~ You must not possess or use any
type of surveillance equipment such as audio, video, and motion detectors, scanners or any
type of surveillance or counter surveillance equipment without prior written permission from
your parole/probation officer.

() 10. You ~~shall~~ must inform your parole/probation officer in the manner that they
direct of any changes in your place of residence and employment, and other pertinent
activities. You ~~shall~~ must answer truthfully all reasonable inquiries by the parole/probation
officer and report to them as directed. This information must be furnished to the
parole/probation officer by written report, telephone, or a personal visit to their office. Your
parole/probation officer may visit your residence or place of employment at reasonable hours.

43 You ~~shall~~ must report within twenty-four hours to: _____.

44 () 11. You ~~shall~~ must submit your person, place of residence and vehicle, or any
45 other property to which you may have access, to search and seizure at any time of day or
46 night by a parole/probation officer, with or without a search warrant.

47 () 12. You ~~shall~~ must waive extradition to the State of North Dakota from any
48 jurisdiction in or outside the United States where you may be found, and you ~~also~~ agree not
49 to contest any effort by any jurisdiction to return you to the State of North Dakota while this
50 probation is in effect.

51 () 13. You ~~shall~~ must support your dependents.

52 () 14. You ~~shall~~ must regularly attend weekly self-help groups such as Alcoholic
53 Anonymous/Narcotics Anonymous, Gamblers Anonymous, Sex Addicts Anonymous,
54 Sexaholics Anonymous or equivalent non-faith-based alternative as approved by the court.

55 () 15. You ~~shall~~ must submit to a medical examination or other reasonable testing
56 to include breath, blood, saliva or urine samples for the purpose of determining the use of
57 alcohol or controlled substances whenever requested by any parole/probation officer. ~~It is a~~
58 ~~violation of probation for you to~~ You must not use any adulterants that may affect the results
59 of a breath, blood, saliva, or urine test.

60 () 16. You ~~shall~~ must receive a chemical dependency/addiction evaluation and
61 comply with all treatment recommendations, subject to your right to a hearing before the
62 court if you disagree with any treatment recommendation.

63 () 17. You ~~shall~~ must pay the following monetary obligations to the clerk of court

in the total amount of \$ _____. The total amount of the obligation ~~shall~~ must be paid prior to the end of probation:

- a. Fines in the amount of \$ _____;
- b. ~~Court appointed~~ Appointed attorney fees in the amount of \$ _____;
- c. Court administration fees and facility improvement fee in the amount of \$ _____;
- d. ~~Restitution~~ Community service fees in the amount of \$ _____;
- e. Victim assistance fees in the amount of \$ _____;
- f. Other in the amount of \$ _____.

() 18. You must pay restitution in the amount of \$ _____ as ordered by the court under N.D.C.C. § 12.1-32-08.

() ~~18:~~ 19. You ~~shall~~ must pay a supervision fee in the amount of \$36.00 _____ each month to the North Dakota Division of Parole and Probation, also known as the Division of Field Services, as required by N.D.C.C. § 12.1-32-07 (2).

() ~~19:~~ 20. You ~~shall~~ must pay the amount of \$50.00 _____ to the North Dakota Division of Parole and Probation, also known as the Division of Field Services, as required by N.D.C.C. § 12.1-32-02 (10) and (11), for preparation of the presentence investigation report.

() ~~20:~~ 21. You ~~shall~~ must undergo various agreed-to community constraints as intermediate measures of the Department of Corrections and Rehabilitation to avoid revocation under N.D.C.C. § 12.1-32-07 (3).

() ~~21:~~ 22. You ~~shall~~ must submit to fingerprinting at the direction of your

85 parole/probation officer.

86 () ~~22: 23.~~ It is a violation of your probation for you to You must not telephone or
87 write to the victim(s), or contact the victim(s) through third parties or be within ____ yards
88 of the victim(s) without written permission of your parole/probation officer.

89 () ~~23: 24.~~ It is a violation of your probation for you to You must not enter onto the
90 premises, travel past, or loiter near where the victim(s) resides without written permission
91 of your parole/probation officer.

92 () ~~24: 25.~~ You shall must provide a sample of blood or other body fluid for DNA
93 law enforcement identification purposes and inclusion in law enforcement identification
94 databases as required by N.D.C.C. ch. 31-13. You shall must pay the cost of the collection
95 and processing of the DNA sample.

96 () ~~25: 26.~~ You shall must attend, participate in, and successfully complete a
97 cognitive restructuring program.

98 () ~~26: 27.~~ You shall must submit to placement on and compliance with an
99 electronic surveillance or monitoring system ~~(GPS/EMS)~~. You must not tamper with,
100 damage, destroy or remove any of this equipment. You must be within the range of this
101 equipment for monitoring, reporting or surveillance purposes. You must reimburse the North
102 Dakota Department of Corrections and Rehabilitation for the actual cost of replacement for
103 any tampered with, damaged, destroyed, lost, or misplaced equipment.

104 () 28. You must perform _____ hours of community service to be completed as
105 follows:_____.

() 29. You must not leave the State of North Dakota without permission of your probation officer.

() 27: 30. Other: _____.

The following are sex offender conditions:

() 28: 31. You ~~shall~~ must attend, participate in, cooperate with and successfully follow and complete all sex offender treatment program rules and requirements and admit responsibility for your offense(s) as part of the treatment requirements. You ~~shall~~ must attend aftercare if recommended by the parole/probation officer or treatment staff.

() 29: 32. ~~You shall register your residential address, employment or school as required by N.D.C.C. § 12.1-32-15 with law enforcement in the county or city of your intended residence as a sex offender or a felony offender against children within 10 days of the date of your criminal judgment or your release from physical custody. You shall also notify law enforcement of any change of address, employment or school within 10 days of the change.~~

Registration:

a. You must register as a sex offender or a felony offender against children within three days after the date of your criminal judgment or your release from custody.

b. You must register with the chief of police in the city or sheriff of the county where you live and inform them in writing where you live, where you work and where you go to school.

c. If you work or go to school in a different city or county or state from where you live, you must also register with the chief of police in the city or sheriff of that county.

127 d. If you plan to change your name, you must inform in writing the police or sheriff
128 at least 10 days before the change. When your name change takes effect, you must inform
129 in writing the police or sheriff within three days.

130 e. While on probation, if you change your vehicle information, e-mail address, or
131 online name, you must tell the police or sheriff within three days after the change.

132 f. If you plan to change your school, or job, or to move, you must inform in writing
133 the police or sheriff in the city or county where you are currently registered at least 10 days
134 before the change.

135 g. After you change your school or job, or after you move, you must register with the
136 police or sheriff in the new city or county where you go to school, work, or live. You must
137 do this within three days after the change.

138 () ~~30: 33.~~ You ~~shall~~ must not initiate, establish or maintain contact, directly or
139 indirectly, with any child under the age of 18, or attempt to do so, except under circumstances
140 approved in advance and in writing by your parole/probation officer.

141 () ~~31: 34.~~ You ~~may only~~ must reside only at a place of residence approved by your
142 parole/probation officer. You ~~may~~ must not move from your place of residence or sleep
143 elsewhere overnight without your parole/probation officer's knowledge and permission and
144 those with whom you reside must know that you are a sex offender.

145 () ~~32: 35.~~ You ~~shall~~ must maintain employment at only such places as are approved
146 by your parole/probation officer. ~~It is a violation of probation for you to~~ You must not work
147 outside the State of North Dakota or leave the State of North Dakota without permission

under the Interstate Compact for the Supervision of Adult Offenders.

() 33: ~~36. It is a violation of your probation for you to~~ You must not go to or loiter near schoolyards, parks, playgrounds, arcades, or other places primarily used or visited by minors.

() 34: ~~37. It is a violation of your probation for you to~~ You must not obtain employment with any agency or place of business that provides services for the care or custody of minors and you ~~may~~ must not operate a business that provides such services without written permission of your parole/probation officer.

() 35: ~~38. It is a violation of your probation for you to~~ You must not purchase, possess, or use sexually stimulating materials of any kind or to use 900 telephone numbers.

() 36: ~~39. It is a violation of your probation for you to~~ You must not subscribe to any Internet service provider, by modem, LAN, DSL or any other manner. You ~~may~~ must not use another person's Internet or use Internet through any commercial venue until and unless approved in writing by your parole/probation officer.

() 37: ~~40. It is a violation of your probation for you to~~ You must not possess children's items, including, but not limited to, children's clothing, toys, games, pictures and books, without written permission from your parole/probation officer.

() 38: ~~41. It is a violation of your probation for you to~~ You must not date or socialize with anybody who has children under the age of 18 without written permission of your parole/probation officer.

() 39: ~~42. You shall~~ must notify your parole/probation officer of any new and

existing romantic or sexual relationships in which you may be involved.

() 40: 43. You ~~shall~~ must submit to any program of psychiatric, psychological or physiological assessment approved by the court.

() 41: 44. You ~~shall~~ must be financially responsible for all costs related to assessments, polygraphs and any treatment programming ordered by the court.

() 42: 45. Employment: You may travel to _____ each day for employment, provided the employment is regular and the employer requires you to work in _____. You ~~may only~~ must be in _____ only for employment purposes during scheduled working hours and you ~~shall~~ must return to _____ immediately after the completion of work each day. ~~It is a violation of probation for you to~~ You must not be in or remain in _____ for any purpose except for employment and to travel to and from employment. You ~~shall~~ must register as a sex offender in _____.

() 43: 46. Visitation. You may travel to _____ for visitation with _____, provided that there are no minor children in the _____ household at the time of visitation. You ~~may only~~ must be in _____ only for visitation purposes and may on be at _____ residence and you ~~shall~~ must return to _____ immediately after completion of visitation. ~~It is a violation of probation for you to~~ You must not be in or remain in _____ for any purpose except for visitation. You ~~shall~~ must register as a sex offender in _____.

() 44. 47. Other: _____.

Dated (Month) (Day), (Year).

BY THE COURT,

_____.

JUDGE

The above conditions of probation have been read and explained to me and I fully understand each one. I ~~shall~~ must follow the conditions that the Court has listed or checked; and I understand that failure to follow any one or more of those conditions may result in a revocation of the probation and that the Court may re-sentence me to any sentence that was available to the Court at the time of the initial sentencing. I acknowledge receipt of a copy of the Judgment.

Dated (Month) (Day), (Year).

_____.

Probationer

The probation conditions have been read and explained to my client by the Court. I attest that my client has stated that he/she understands each one of the court ordered probation conditions.

Dated (Month) (Day), (Year).

_____.

Defense Attorney

Original to Court file

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211 ___ 1 Certified copy to Warden/Superintendent of NDSP, TRCU, MRCC-- if
212 imprisonment is ordered

213 ___ 1 Certified copy to Sheriff/Jail Administrator -- if county imprisonment is ordered
214 ___ 1 Copy to Defendant
215 ___ 1 Copy to State's Attorney
216 ___ 1 Copy to Local Probation Officer -- if on supervised probation

FORM 9A. APPENDIX "A" (WITHOUT SEX OFFENDER CONDITIONS)
CONDITIONS FOR SENTENCE TO PROBATION, DEFERRED OR SUSPENDED
SENTENCE IN THE CASE OF

State vs. _____

Criminal Case No. _____ -- _____ County

By Order of the Court:

1. You must not violate any federal, tribal, state, county or municipal criminal law or ordinance during the period of probation.

(☐) 2. You must not own, purchase, borrow, possess, use or carry any type of firearm, destructive device or dangerous weapon while on probation.

3. You must not willfully defraud a urine test administered as a condition of probation.

(☐) 4. You must continue your present employment or seek and maintain suitable employment; you may pursue a vocational or educational course of study that will lead to future or better employment.

(☐) 5. You must not use or possess any alcoholic beverage, or to enter any liquor, beer or wine establishment during the period of time you are under probation supervision, unless otherwise authorized by your parole/probation officer.

(☐) 6. You must refrain from excessive use of alcohol. Any excessive use of alcohol or controlled substances will give your parole/probation officer the right to require you to undergo an outpatient evaluation and abide by the recommendations of the evaluator.

Excessive use of alcohol is presumed if you have an alcohol concentration of _____ percent or higher.

() 7. You must not use or possess any non-prescribed controlled substance while on probation supervision. You must not knowingly associate with users or traffickers in narcotics, marijuana, or other controlled substances.

() 8. You must not associate with any known felons without prior permission from your parole/probation officer.

() 9. You must not possess or use any type of surveillance equipment such as audio, video, and motion detectors, scanners or any type of surveillance or counter surveillance equipment without prior written permission from your parole/probation officer.

() 10. You must inform your parole/probation officer in the manner that they direct of any changes in your place of residence and employment, and other pertinent activities. You must answer truthfully all reasonable inquiries by the parole/probation officer and report to them as directed. This information must be furnished to the parole/probation officer by written report, telephone, or a personal visit to their office. Your parole/probation officer may visit your residence or place of employment at reasonable hours. You shall must report within twenty-four hours to: _____.

() 11. You must submit your person, place of residence and vehicle, or any other property to which you may have access, to search and seizure at any time of day or night by a parole/probation officer, with or without a search warrant.

() 12. You must waive extradition to the State of North Dakota from any

jurisdiction in or outside the United States where you may be found, and you also agree not to contest any effort by any jurisdiction to return you to the State of North Dakota while this probation is in effect.

() 13. You must support your dependents.

() 14. You must regularly attend weekly self-help groups such as Alcoholic Anonymous/Narcotics Anonymous, Gamblers Anonymous, Sex Addicts Anonymous, Sexaholics Anonymous or equivalent non-faith-based alternative as approved by the court.

() 15. You must submit to a medical examination or other reasonable testing to include breath, blood, saliva or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any parole/probation officer. You must not use any adulterants that may affect the results of a breath, blood, saliva, or urine test.

() 16. You must receive a chemical dependency/addiction evaluation and comply with all treatment recommendations, subject to your right to a hearing before the court if you disagree with any treatment recommendation.

() 17. You must pay the following monetary obligations to the clerk of court in the total amount of \$ _____. The total amount of the obligation must be paid prior to the end of probation:

a. Fines in the amount of \$ _____;

b. Appointed attorney fees in the amount of \$ _____;

c. Court administration fees and facility improvement fee in the amount of \$ _____;

d. Community service fees in the amount of \$ ____;

e. Victim assistance fees in the amount of \$ ____;

f. Other in the amount of \$ ____.

() 18. You must pay restitution in the amount of \$ ____ as ordered by the court under N.D.C.C. § 12.1-32-08.

() 19. You must pay a supervision fee in the amount of \$ ____ each month to the North Dakota Division of Parole and Probation, also known as the Division of Field Services, as required by N.D.C.C. § 12.1-32-07 (2).

() 20. You must pay the amount of \$ ____ to the North Dakota Division of Parole and Probation, also known as the Division of Field Services, as required by N.D.C.C. § 12.1-32-02 (10) and (11), for preparation of the presentence investigation report.

() 21. You must undergo various agreed-to community constraints as intermediate measures of the Department of Corrections and Rehabilitation to avoid revocation under N.D.C.C. § 12.1-32-07 (3).

() 22. You must submit to fingerprinting at the direction of your parole/probation officer.

() 23. You must not telephone or write to the victim(s), or contact the victim(s) through third parties or be within ____ yards of the victim(s) without written permission of your parole/probation officer.

() 24. You must not enter onto the premises, travel past, or loiter near where the victim(s) resides without written permission of your parole/probation officer.

() 25. You must provide a sample of blood or other body fluid for DNA law enforcement identification purposes and inclusion in law enforcement identification databases as required by N.D.C.C. ch. 31-13. You must pay the cost of the collection and processing of the DNA sample.

() 26. You must attend, participate in, and successfully complete a cognitive restructuring program.

() 27. You must submit to placement on and compliance with an electronic surveillance or monitoring system. You must not tamper with, damage, destroy or remove any of this equipment. You must be within the range of this equipment for monitoring, reporting or surveillance purposes. You must reimburse the North Dakota Department of Corrections and Rehabilitation for the actual cost of replacement for any tampered with, damaged, destroyed, lost, or misplaced equipment.

() 28. You must perform _____ hours of community service to be completed as follows: _____.

() 29. You must not leave the State of North Dakota without permission of your probation officer.

() 30. Other: _____.

Dated (Month) (Day), (Year).

BY THE COURT,

_____.

JUDGE

The above conditions of probation have been read and explained to me and I fully understand each one. I must follow the conditions that the Court has listed or checked; and I understand that failure to follow any one or more of those conditions may result in a revocation of the probation and that the Court may re-sentence me to any sentence that was available to the Court at the time of the initial sentencing. I acknowledge receipt of a copy of the Judgment.

Dated (Month) (Day), (Year).

_____.

Probationer

The probation conditions have been read and explained to my client by the Court. I attest that my client has stated that he/she understands each one of the court ordered probation conditions.

Dated (Month) (Day), (Year).

_____.

Defense Attorney

Original to Court file

___ 1 Certified copy to Warden/Superintendent of NDSP, TRCU, MRCC-- if imprisonment is ordered

___ 1 Certified copy to Sheriff/Jail Administrator -- if county imprisonment is ordered

___ 1 Copy to Defendant

___ 1 Copy to State's Attorney

1 Copy to Local Probation Officer -- if on supervised probation

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RULE 2.2. TERMINATION OF PARENTAL RIGHTS - EXPEDITED APPEALS

(a) Filing Notice of Expedited Appeal. An appeal from an order terminating parental rights must be taken by filing a notice of expedited appeal with the clerk of district court within 30 days after entry of the order.

(b) Content of notice of appeal. The notice of appeal must:

(1) specify the party or parties taking the appeal;

(2) designate the order being appealed;

(3) name the court to which the appeal is taken; and

(4) indicate that an expedited appeal is requested.

(c) Motion for temporary stay and specifications of error. Any motion for a temporary stay of the order appealed from while the appeal is pending must be served and filed with the notice of appeal along with specifications of error specifying the grounds for appeal. Any stay granted by the district court remains valid only if a temporary stay request is filed with the supreme court with the notice of appeal. Once the supreme court acts on the stay request, any district court stay terminates.

(d) Record on appeal. The record on appeal consists of the record required by Rule 10(a). A recording of the proceedings or an agreed statement of the case may substitute for the transcript.

(e) Briefs.

(1) Filing Time. The appellant's brief must be filed with the notice of appeal and

22 served upon the opposing party at the time of filing. The appellee's brief must be served and
23 filed no later than 15 days after service of the appellant's brief.

24 (2) Extensions. Extensions of time for filing briefs may not be granted except in the
25 most unusual circumstances and only for the most compelling reasons in the interest of
26 justice.

27 (f) Motions. Any motion, other than a motion for temporary stay, must be filed within
28 five days after service of the notice of appeal. Any party may file a response in opposition
29 to a motion within five days after service of the motion.

30 (g) Expedited Review. The court must give priority to appeals under this rule.

31 (h) Application of other rules. To the extent they are not inconsistent with this rule,
32 all other rules of appellate procedure apply.

33 EXPLANATORY NOTE

34 Rule 2.2 was adopted, effective March 1, 2009.

35 All appeals from orders terminating parental rights must be made under this rule.

36 Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 9-11.

RULE 14. IDENTITY PROTECTION

(a) Form of Confidential References. In appellate briefs, at oral argument and in opinions, the following individuals may not be referred to by name but may be referred to by the individual's initials:

(1) the respondent in a mental health proceeding;

(2) the respondent and members of the respondent's family in a conservatorship or guardianship proceeding;

(3) the respondent in a juvenile proceeding;

(4) the child and parents in a proceeding to terminate parental rights;

(5) a minor child ~~in a divorce, child custody, or child support case;~~

(6) a victim or alleged victim of a sexual offense.

(b) Modification of Electronic Opinions. Upon request, if the name of an individual eligible for protection under subdivision (a) appears in the electronic version of a specific appellate opinion, it must be replaced by the individual's initials and the opinion annotated with the words "Modified under N.D.R.App.P. 14."

EXPLANATORY NOTE

Rule 14 was adopted effective March 1, 2008; amended effective March 1, 2009.

This rule is not intended to create a separate cause of action.

Paragraph (a)(5) was amended effective March 1, 2009, to require all references to minor children in appellate material to be by the individual child's initials.

Sources: Joint Procedure Committee Minutes of April 26-27, 2007, pages 28-29.

Statutes Affected:

Considered: N.D.C.C. §§ 12.1-34-02, 12.1-35-03, 14-15-16, 14-20-54, 25-03.1-43, 27-20-51.

RULE 2.2. FACSIMILE TRANSMISSION [REPEALED]

~~(a) Filing.~~

~~Papers required to be filed with the clerk of the trial court may be filed by facsimile transmission, if the clerk of court has a bond-paper facsimile receiving machine available in the courthouse. Filing is complete when the facsimile transmission is received by the clerk. A document received by the clerk's office in whole or in part after normal business hours must be processed on the next court day and deemed received at the opening of business on that day. The filed facsimile is the original.~~

~~Within 5 days after the clerk of court has received the transmission, the party filing by facsimile transmission shall forward the filing fee, if any, to the clerk of the court.~~

~~Upon failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just, including but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any party thereof.~~

~~(b) Issuance of Orders or Warrants.~~

~~Facsimile transmissions may be used for the issuance of all orders and warrants and have the same effect as the original. Documents supporting an order or warrant, including affidavits, must be delivered promptly to the clerk of court for the county where the request or application for the order or warrant was made.~~

EXPLANATORY NOTE

Rule 2.2 was adopted effective January 1, 1995, amended effective March 1, 2002, ~~March 1, 2003~~ repealed, effective March 1, 2009, to eliminate the separate rule for filing by facsimile transmission. Filing by facsimile transmission is a form of electronic filing and is governed by the Supreme Court's rules and orders on the filing of electronic documents.

The rule is not intended to govern appeals to the Supreme Court of North Dakota. See N.D.R.App.P. 25(a) and N.D. Sup. Ct. Admin. R. 31.

Rule 2.2 was amended, effective March 1, 2002, to delete the facsimile transmission fee.

Subdivision (b) was amended, effective March 1, 2003, to delete the requirement that the original order or warrant be delivered to the clerk of the court.

Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 12-16; April 25-26, 2002, pages 15-16; September 28-29, 2000, pages 7-8; January 26-27, 1995, pages 2-3; September 23-24, 1993, pages 17-19; April 29-30, 1993, pages 11-16; November 7-8, 1991, page 3; October 25-26, 1990, pages 9-10.

Cross Reference: N.D.R.App.P. 25(a) (Filing and Service); ~~N.D. Sup. Ct. Admin. R. 31 (Facsimile Transmission)~~ N.D. Sup. Ct. Admin. Order 14 (Electronic Filing in the Supreme Court); N.D. Sup. Ct. Admin. Order 16 (Electronic Filing in the District Courts).

RULE 3.1. PLEADINGS

(a) Legibility and Numbering.

All pleadings and other documents must be typewritten, printed, or reproduced and easily readable. Each sheet must be separately numbered. Pleadings and other documents filed with the court, except as otherwise permitted by the court, must be prepared on 8 1/2 x 11 inch white paper. ~~Until July 1, 1982, either legal or letter size papers may be filed.~~

(b) Signature.

All pleadings and other documents of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name and contain the attorney's address, telephone number, and State Board of Law Examiners identification number. All pleadings and other documents of a party who is not represented by an attorney must be signed by the party and contain the party's address and telephone number.

(c) Spacing and Names.

Writing must appear on one side of the sheet only and must be double-spaced, except for quoted material. Names must be typed or printed beneath all signatures.

(d) Binding.

All pleadings or other documents in an action or proceeding must be filed by the clerk flat and unfolded and each set of papers firmly fastened together.

(e) Filing of Documents.

A party seeking to file a pleading or other document must submit it to the clerk. The

first submitted version of a pleading or document will be treated as the original unless otherwise ordered by the court.

(f) Non-conforming Documents - Sanctions.

If a party fails to comply with this rule, the court on motion of a party or its own motion, may order the pleading or other document to be reformed. If the order is not obeyed, the court may order the document stricken and its service to be of no effect.

(g) Copy of Lost Papers.

If any original document is lost or withheld by any person, the court may authorize a copy to be filed.

(h) File Numbers.

The clerk, at the time of the filing of a case and at the time of the filing of any responsive pleading, shall assign a file number to the case and immediately notify the attorney of record of the file number assigned to the proceedings. Thereafter, all documents and pleadings to be filed must bear the assigned file number on the front or title page in the upper righthand portion of the instrument to be filed. Documents and pleadings that do not conform to this rule will not be filed by the clerk until they are in compliance with this rule.

(i) Proof of Service Attached.

Proof of service must be securely attached to pleadings and documents submitted to the clerk for filing.

(j) ~~Personal Information~~ Privacy Protection for Filings Made with Court.

~~(1) "Personal information" means a person's social security number, any credit, debit,~~

43 ~~or electronic fund transfer card numbers, and any other financial account numbers.~~

44 ~~(2) Restrictions on Personal Information in Filings.~~

45 ~~Parties should refrain from including personal information in filings submitted to the~~
46 ~~court, except when required by law. When personal information is included in a filing or~~
47 ~~attachment, only the last four digits of the number may be used.~~

48 ~~(3) Non-Redacted Filings.~~

49 ~~If a party is required to include non-redacted personal information in a document that~~
50 ~~is filed, the document must be marked clearly to reflect that it contains confidential~~
51 ~~information. The clerk must then retain the document in a restricted part of the case file. The~~
52 ~~party shall file a redacted copy of the document for public access.~~

53 ~~(4) Responsibility for Redaction.~~

54 Parties must follow privacy protection instructions in N.D.R.Ct. 3.4 when making
55 filings with the court. The responsibility for redacting personal information and marking
56 documents containing non-redacted personal information making a redacted and unredacted
57 filing rests solely with counsel and the parties. Court personnel have no duty to review
58 documents for compliance with ~~this rule~~ N.D.R.Ct. 3.4.

59 EXPLANATORY NOTE

60 Rule 3.1 was amended, effective January 1, 1988; March 1, 1996; March 1, 1999;
61 August 1, 2001; March 1, 2005; March 1, 2007; March 1, 2009.

62 A new subdivision (b) was added, effective March 1, 1996, which contains signature
63 requirements. The letter designation of each existing subdivision was amended accordingly.

64 A new subdivision (e) was added, effective March 1, 2005, to clarify that documents
65 must be filed with the clerk. Submitting a document to a judge or to court personnel other
66 than the clerk does not constitute filing. The first version of a given document submitted to
67 the clerk, regardless of what form it is in, will be filed and treated as the original. A party
68 seeking to correct the original or have another document treated as the original must obtain
69 an order from the court.

70 Subdivision (h) was amended, effective March 1, 1999, to allow notification by means
71 other than mail.

72 Subdivision (j) was added, effective March 1, 2005, to protect personal information
73 submitted with pleadings or other documents filed with the court. ~~Parties must limit the~~
74 ~~amount of personal information they include in court filings and redact personal information~~
75 ~~when its inclusion in a filing cannot be avoided. Filings containing non-redacted personal~~
76 ~~information should be filed only when a party is required by statute, policy or rule to include~~
77 ~~personal information in a filing.~~

78 Paragraph Subdivision (j)(4) was amended, effective March 1, 2007, to specify that
79 court personnel have no duty to review documents for compliance with Rule 3.1 privacy
80 protection rules.

81 Subdivision (j) was amended, effective March 1, 2009, to reflect the addition of
82 document privacy protection requirements to N.D.R.Ct. 3.4.

83 Sources: Joint Procedure Committee Minutes of January 24, 2008, pages 9-12;
84 October 11-12, 2007, pages 28-30; April 26-27-, 2007, page 31; September 22-23, 2005,

85 pages 16-17; September 23-24, 2004, pages 3-5; April 29-30, 2004, pages 6-13, 17-25;
86 January 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003,
87 pages 6-12; January 29-30, 1998, page 22; September 29-30, 1994, pages 6-7.

88 Cross Reference: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court);
89 N.D.Sup.Ct.Admin.R. 41 (Access to Judicial Records).

RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or, in a criminal case, the home address of an individual, a party or nonparty making the filing must include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials;

(4) the last four digits of the financial-account number; and

(5) in a criminal case, the city and state of the home address.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(4) a filing covered by Rule 3.4 (c);

22 (5) a court filing that is related to a criminal matter and that is prepared before the
23 filing of a criminal charge or is not filed as part of any docketed criminal case;

24 (6) an arrest or search warrant; and

25 (7) a charging document and an affidavit filed in support of a charging document.

26 (c) Filings Made Under Seal. The court may order that a filing be made under seal
27 without redaction. The court may later unseal the filing or order the person who made the
28 filing to file a redacted version for the public record.

29 (d) Protective Orders. For good cause, the court may by order in a case:

30 (1) require redaction of additional information; or

31 (2) limit or prohibit a nonparty's remote electronic access to a document filed with the
32 court.

33 (e) Option for Additional Unredacted Filing Under Seal. A person making a redacted
34 filing may also file an unredacted copy under seal. The court must retain the unredacted copy
35 as part of the record.

36 (f) Option for Filing a Reference List. A filing that contains redacted information may
37 be filed together with a reference list that identifies each item of redacted information and
38 specifies an appropriate identifier that uniquely corresponds to each item listed. The list must
39 be filed under seal and may be amended as of right. Any reference in the case to a listed
40 identifier will be construed to refer to the corresponding item of information.

41 (g) Non-conforming Documents.

42 (1) Waiver. A person waives the protection of Rule 3.4 (a) as to the person's own

43 information by filing it without redaction and not under seal.

44 (2) Sanctions. If a party fails to comply with this rule, the court on motion of another
45 party or its own motion, may order the pleading or other document to be reformed. If the
46 order is not obeyed, the court may order the document stricken.

47 EXPLANATORY NOTE

48 Rule 3.4 was adopted effective March 1, 2009.

49 Sources: Joint Procedure Committee Minutes of January 24, 2008, pages 9-12;
50 October 11-12, 2007, pages 28-30; April 26-27-, 2007, page 31.

51 Cross Reference: N.D.R.Ct. 3.1 (Pleadings); N.D.Sup.Ct.Admin.R. 41 (Access to
52 Judicial Records).

RULE 11.2. WITHDRAWAL OF ATTORNEYS

(a) Notice of withdrawal. An attorney's appearance for a party may only be withdrawn upon leave of court. Reasonable notice of the motion for leave to withdraw must be given by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery, directed to the party at the party's last known business or residence address.

(b) Motion to withdraw. The motion for leave to withdraw must be in writing and, unless another attorney is substituted, must state the last known address of the party represented.

(c) Withdrawal on Appeal. If a notice of appeal is filed in a matter, any attorney seeking leave to withdraw must file the motion with the supreme court clerk.

(d) Limited Appearance. This rule does not apply to attorneys representing a party under a notice of limited representation served under N.D.R.Civ.P. 11(e) unless the attorney seeks to withdraw from the limited representation itself.

EXPLANATORY NOTE

Rule 11.2 was amended, effective March 1, 1999; March 1, 2000; March 1, 2006; March 1, 2009.

The March 1, 1999, amendments allow notice via a commercial carrier providing a traceable delivery service.

The March 1, 2000, amendments are stylistic.

22 Subdivision (c) was added, effective March 1, 2006, to make it clear that an attorney
23 seeking to withdraw from representation in a matter that is on appeal must file a motion for
24 leave to withdraw with the supreme court clerk. The supreme court clerk will refer
25 withdrawal motions involving court appointed attorneys to the trial court for decision and
26 appointment of new counsel.

27 Subdivision (d) was added, effective March 1, 2009, to make it clear that an attorney
28 who serves a notice of limited representation to represent a party for one or more matters in
29 a case is not required to formally withdraw upon completion of activity covered by the
30 notice. Under N.D.R.Civ.P. 11(e), however, the attorney must serve a notice of termination
31 of limited representation when the attorney's involvement ends. Rule 11.2 and N.D.R.Civ.P.
32 5 and 11 were amended to permit attorneys to assist otherwise unrepresented parties on a
33 limited basis without undertaking full representation of the party.

34 Sources: Joint Procedure Committee Minutes of January 24, 2008, pages 2-7; October
35 11-12, 2007, pages 20-26; September 23-24, 2004, page 29; May 6-7, 1999, pages 15-16;
36 January 29-30, 1998, page 22.

37 Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers),
38 N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers; Representation to Court;
39 Sanctions); N.D.R. Prof. Conduct 1.2 (Scope of Representation).

RULE 41. ACCESS TO COURT RECORDS

Section 1. Purpose.

The purpose of this rule is to provide a comprehensive framework for public access to court records. Every member of the public will have access to court records as provided in this rule.

Section 2. Definitions.

(a) "Court record," regardless of the form, includes:

(1) any document, information, or other thing that is collected, received, or maintained by court personnel in connection with a judicial proceeding;

(2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by court personnel that is related to a judicial proceeding; and

(3) information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) "Court record" does not include:

(1) other records maintained by the public official who also serves as clerk of court;

(2) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in this rule;

(3) a record that has been disposed of under court records management rules.

(c) "Public access" means that the public may inspect and obtain a copy of the information in a court record.

(d) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

(e) "Bulk distribution" means the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

(f) "Compiled information" means information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(g) "Electronic form" means information in a court record that exists as:

(1) electronic representations of text or graphic documents;

(2) an electronic image, including a video image, of a document, exhibit or other thing;

(3) data in the fields or files of an electronic database; or

(4) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

Section 3. General Access Rule.

(a) Public Access to Court Records.

(1) Information in the court record is accessible to the public except as prohibited by this rule.

43 (2) There must be a publicly accessible indication of the existence of information in
44 a court record to which access has been prohibited, which indication may not disclose the
45 nature of the information protected.

46 (3) A court may not adopt a more restrictive access policy or otherwise restrict access
47 beyond that provided for in this rule, nor provide greater access than that provided for in this
48 rule.

49 (b) When Court Records May Be Accessed.

50 (1) Court records in a court facility must be available for public access during normal
51 business hours. Court records in electronic form to which the court allows remote access will
52 be available for access subject to technical systems availability.

53 (2) Upon receiving a request for access to information, the clerk of court shall respond
54 as promptly as practical. If a request cannot be granted promptly, or at all, an explanation
55 must be given to the requestor as soon as possible. The requesting person has a right to at
56 least the following information: the nature of any problem preventing access and the specific
57 statute, federal law, or court or administrative rule that is the basis of the denial. The
58 explanation must be in writing if desired by the requestor.

59 (c) Fees for Access. The court may charge a fee for access to court records in
60 electronic form, for remote access, for bulk distribution or for compiled information. To the
61 extent that public access to information is provided exclusively through a vendor, the court
62 will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

63 Section 4. Methods of Access to Court Records.

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64 (a) Access to Court Records at Court Facility

65 (1) Request for Access. Any person desiring to inspect, examine, or copy a court
66 record shall make an oral or written request to the clerk of court. If the request is oral, the
67 clerk may require a written request if the clerk determines that the disclosure of the record
68 is questionable or the request is so involved or lengthy as to need further definition. The
69 request must clearly identify the record requested so that the clerk can locate the record
70 without doing extensive research. Continuing requests for a document not yet in existence
71 may not be considered.

72 (2) Response to Request. The clerk of court is not required to allow access to more
73 than ten files per day per requestor but may do so in the exercise of the clerk's discretion if
74 the access will not disrupt the clerk's primary function. If the request for access and
75 inspection is granted, the clerk may set reasonable time and manner of inspection
76 requirements that ensure timely access while protecting the integrity of the records and
77 preserving the affected office from undue disruption. The inspection area must be within full
78 view of court personnel whenever possible. The person inspecting the records may not leave
79 the court facility until the records are returned and examined for completeness.

80 (3) Response by Court. If a clerk of court determines there is a question about whether
81 a record may be disclosed, or if a written request is made under Section 6(b) for a ruling by
82 the court after the clerk denies or grants an access request, the clerk shall refer the request
83 to the court for determination. The court must use the standards listed in Section 6 to
84 determine whether to grant or deny the access request.

(b) Remote Access to Court Records. The following information in court records must be made remotely accessible to the public if it exists in electronic form, unless public access is restricted under this rule:

- (1) litigant/party indexes to cases filed with the court;
- (2) listings of new case filings, including the names of the parties;
- (3) register of actions showing what documents have been filed in a case;
- (4) calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;
- (5) judgments, orders, or decrees in a case and liens affecting title to real property;
- (6) reports specifically developed for electronic transfer approved by the state court administrator and reports generated in the normal course of business, if the report does not contain information that is excluded from public access under Section 5 or 6.

(c) Requests for Bulk Distribution of Court Records.

(1) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under Section 3(a).

(2) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information under this subsection the requestor must comply with the provisions of Section 6.

(d) Access to Compiled Information From Court Records.

106 (1) Any member of the public may request compiled information that consists solely
107 of information that is publicly accessible and that is not already in an existing report. The
108 court may compile and provide the information if it determines, in its discretion, that
109 providing the information meets criteria established by the court, that the resources are
110 available to compile the information and that it is an appropriate use of public resources. The
111 court may delegate to its staff or the clerk of court the authority to make the initial
112 determination to provide compiled information.

113 (2) Requesting compiled restricted information.

114 (A) Compiled information that includes information to which public access has been
115 restricted may be requested by any member of the public only for scholarly, journalistic,
116 political, governmental, research, evaluation, or statistical purposes.

117 (B) The request must:

118 (i) identify what information is sought ,

119 (ii) describe the purpose for requesting the information and explain how the
120 information will benefit the public interest or public education, and

121 (iii) explain provisions for the secure protection of any information requested to which
122 public access is restricted or prohibited.

123 (C) The court may grant the request and compile the information if it determines that
124 doing so meets criteria established by the court and is consistent with the purposes of this
125 rule, the resources are available to compile the information, and that it is an appropriate use
126 of public resources.

(D) If the request is granted, the court may require the requestor to sign a declaration that:

(i) the data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,

(ii) the information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and

(iii) there will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

Section 5. Court Records Excluded From Public Access.

The following information in a court record is not accessible to the public:

(a) Information that is not accessible to the public under federal law.

(b) Information that is not accessible to the public under state law, court rule, case law or court order, including:

(1) affidavits or sworn testimony and records of proceedings in support of the issuance of a search or arrest warrant pending the return of the warrant;

(2) information in a complaint and associated arrest or search warrant to the extent confidentiality is ordered by the court under *Section 29-05-32* or *29-29-22, NDCC*;

(3) documents filed with the court for in-camera examination pending disclosure;

(4) domestic violence protection order files and disorderly conduct restraining order files when the restraining order is sought due to domestic violence, except for orders of the court;

(5) names of qualified or summoned jurors and contents of jury qualification forms if disclosure is prohibited or restricted by order of the court;

~~(6) records of voir dire of jurors unless disclosure is permitted by court order or rule~~
sexually explicit material or property that is evidence in a case;

(7) records of deferred impositions of sentences resulting in dismissal;

(8) social security numbers, taxpayer identification numbers, birth dates, the name of
an individual known to be a minor, ~~credit, debit, or electronic fund transfer card numbers,~~
~~and any financial account numbers, and, in criminal cases, the home address of an individual;~~

(9) judge and court personnel work material, including personal calendars, communications from law clerks, bench memoranda, notes, work in progress, draft documents and non-finalized documents.

(c) This rule does not preclude access to court records by the following persons in the following situations:

(1) federal, state, and local officials, or their agents, examining a court record in the exercise of their official duties and powers.

(2) parties to an action and their attorneys examining the court file of the action, unless restricted by order of the court, but parties and attorneys may not access judge and court personnel work material in the court file.

(d) A member of the public may request the court to allow access to information excluded under Section 5 as provided in Section 6.

Section 6. Requests to Prohibit Public Access to Information in Court Records or to Obtain Access to Restricted Information.

(a) Request to Prohibit Access.

(1) A request to prohibit public access to information in a court record may be made by any party to a case, by the individual about whom information is present in the court record, or on the court's own motion on notice as provided in Section 6(c).

(2) The court must decide whether there are sufficient grounds to overcome the presumption of openness of court records and prohibit access according to applicable constitutional, statutory and case law.

(3) In deciding whether to prohibit access the court must consider that the presumption of openness may only be overcome by an overriding interest. The court must articulate this interest along with specific findings sufficient to allow a reviewing court to determine whether the closure order was properly entered.

(4) The closure of the records must be no broader than necessary to protect the articulated interest. The court must consider reasonable alternatives to closure, such as redaction or partial closure, and the court must make findings adequate to support the closure. The court may not deny access only on the ground that the record contains confidential or closed information.

(5) In restricting access the court must use the least restrictive means that will achieve

the purposes of this rule and the needs of the requestor.

(b) Request to Obtain Access.

(1) A request to obtain access to information in a court record to which access is prohibited under Section 4(a), 5 or 6(a) may be made by any member of the public or on the court's own motion on notice as provided in Section 6(b).

(2) In deciding whether to allow access, the court must consider whether there are sufficient grounds to overcome the presumption of openness of court records and continue to prohibit access under applicable constitutional, statutory and case law. In deciding this the court must consider the standards outlined in Section 6(a).

(c) Form of Request.

(1) The request must be made by a written motion to the court.

(2) The requestor shall give notice to all parties in the case.

(3) The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under Section 6(a), the court must provide notice to the individual or entity that requested that access be prohibited.

Section 7. Obligations Of Vendors Providing Information Technology Support To A Court To Maintain Court Records.

(a) If the court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply

211 with the intent and provisions of this rule. For purposes of this section, "vendor" includes a
212 state, county or local governmental agency that provides information technology services to
213 a court.

214 (b) By contract the vendor will be required to notify the court of any requests for
215 compiled information or bulk distribution of information, including the vendor's requests for
216 such information for its own use.

217 Adopted on an emergency basis effective October 1, 1996; Amended and adopted
218 effective November 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; Appendix
219 amended effective August 1, 2001, to reflect the name change of State Bar Board to State
220 Board of Law Examiners.

221 HISTORY: Joint Procedure Committee Minutes of January 24, 2008, pages 9-12;
222 October 11-12, 2007, pages 28-30; April 26-27-, 2007, page 31; September 22-23, 2005,
223 pages 6-16; April 28-29, 2005, pages 22-25; Court Technology Committee Minutes of June
224 18, 2004; March 19, 2004; September 12, 2003; Conference of Chief Justices/Conference
225 of State Court Administrators: Guidelines for Public Access to Court Records.

ORDER 16. ELECTRONIC FILING ~~PILOT PROJECT FOR~~ IN THE DISTRICT
COURTS

A. Electronic Filing.

1. ~~A party may electronically file documents~~ Documents may be filed electronically in the district courts.

2. A document filed electronically has the same legal effect as a paper document.

3. The ~~typed attorney, party, notary public or other~~ name or facsimile signature on a document filed electronically has the same effect as an original manually affixed signature.

B. Filing Formats. Documents filed electronically ~~may~~ must be submitted by facsimile transmission or e-mail to the district court clerk unless otherwise ordered by the court. A directory of district court fax numbers and e-mail addresses for electronic filing is available online at www.ndcourts.gov. E-mailed documents must be in portable document format (.pdf) or approved word processing format.

1. Approved word processing formats for documents filed electronically are WordPerfect, Word, and ASCII. Parties must obtain permission from the district court clerk in advance if they seek to submit documents in another word processing format.

2. All paragraphs must be numbered in documents filed electronically. Reference to material in such documents must be to paragraph number, not page number.

C. Time of Filing.

1. A document in compliance with the rules and submitted electronically to the district

22 court clerk by ~~5:00~~ 11:59 p.m. local time will be considered filed on the date submitted. A
23 ~~document filed after 5:00 p.m. will be considered filed on the next business day.~~

24 2. Upon receiving a document filed ~~electronically~~ by e-mail, the district court clerk
25 will issue an e-mail confirmation that the document has been received.

26 3. A party filing a document electronically must pay any required filing fee:

27 ~~4. A party filing electronically must pay a surcharge for internal reproduction of the~~
28 ~~document by the district court. No surcharge payment is required for documents less than~~
29 ~~20 total pages in length. A party electronically filing a document must pay \$.10 per page for~~
30 ~~each page in excess of 20 pages.~~

31 ~~5. A party must pay all required fees within five days of submitting a document filed~~
32 ~~electronically. If fees are not paid within five days of submission, the document will be~~
33 ~~returned by the district court clerk and the party will be required to refile the document.~~

34 D. Electronic Service.

35 1. If a party files a document by electronic means, the party must serve the document
36 by electronic means if the recipient consents to accept documents served electronically.
37 Service by electronic means is not effective if the party making service learns that the
38 attempted service did not reach the person to be served.

39 2. A party may designate a fax number or an e-mail address as their ~~e-mail~~ address for
40 the purpose of accepting electronic service.

41 3. If a recipient does not consent to accept electronic service of a document, service
42 by another means specified in the rules is required.

43 4. For purposes of computation of time, any document electronically served must be
44 treated as if it were mailed on the date of transmission.

45 E. Effective Date. This Order is effective March 1, 2006, and remains in effect until
46 further order of the Court. This Order was revised, effective March 1, 2008; March 1, 2009.