

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

NOTICE OF COMMENT

Supreme Court No. 20190244

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

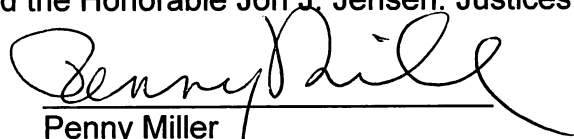
[¶1] On August 7, 2019, the Joint Procedure Committee filed a Petition with the Supreme Court proposing amendments to North Dakota Rules of Civil Procedure 39.1; North Dakota Rules of Criminal Procedure 37 and Form 9A; North Dakota Rules of Appellate Procedure 2.2, 4, 10, and 21; North Dakota Rules of Evidence 615; and North Dakota Supreme Court Administrative Rule 41. The proposals are available at <https://www.ndcourts.gov/news/north-dakota/north-dakota-supreme-court/notices>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal.

[¶2] On September 25, 2019, the Court adopted a rewritten version of North Dakota Supreme Court Administrative Rule 41, (See, Supreme Court No. 20180118), effective January 1, 2020. Amendments to the version of North Dakota Supreme Court Administrative Rule 41 that is currently in effect are included in this rules package. Should the Court approve the proposed amendments, they will be incorporated into the rewritten version of North Dakota Administrative Rule 41 that becomes effective January 1, 2010. The Court considered the matter, and

[¶3] **IT IS ORDERED**, any person wishing to comment on the proposals may do so by email to Penny Miller, Clerk of the Supreme Court, at supclerkofcourt@ndcourts.gov or in writing addressed to 600 E. Boulevard Ave., Bismarck, ND 58505-0530, no later than **Monday, October 30, 2019**.

[¶4] Entered by the Clerk of the Supreme Court at the direction of the Honorable Gerald W. VandeWalle, Chief Justice, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen, Justices.

Dated: September 30, 2019.


Penny Miller
Clerk
North Dakota Supreme Court

20190244

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
AUGUST 7, 2019
STATE OF NORTH DAKOTA

IN THE SUPREME COURT STATE OF NORTH DAKOTA

Proposed Amendments to the North Dakota:

Rules of Civil Procedure
Rules of Criminal Procedure
Rules of Appellate Procedure
Rules of Evidence
Supreme Court Administrative Rules

Submitted by the
Joint Procedure Committee
August 2019

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Joint Procedure Committee,)	PETITION FOR ADOPTION,
)	AMENDMENT, OR
Petitioner,)	REPEAL OF COURT RULES
)	

TO: The Supreme Court of the State of North Dakota:

The Joint Procedure Committee petitions the Supreme Court, under N.D.R.Proc.R. § 3, for an order adopting the following proposals:

North Dakota Rules of Civil Procedure

Rule 39.1 - Change in Location of a Hearing, Proceeding, or Trial; Change of Venue

North Dakota Rules of Criminal Procedure

Rule 37 - Appeal as of Right to District Court; How Taken
Form 9A - Appendix (A) Conditions for Sentence to Probation, Deferred or Suspended Sentence

North Dakota Rules of Appellate Procedure

Rule 2.2 - Termination of Parental Rights - Expedited Appeals
Rule 4 - Appeal - When Taken
Rule 10 - The Record on Appeal
Rule 21 - Writs

North Dakota Rules of Evidence

Rule 615 - Excluding Witnesses

North Dakota Supreme Court Administrative Rules

Rule 41 - Access to Court Records


This petition is supported by the attached material containing the proposed rules, proposed explanatory notes, and synopsis of the proposals.

Dated August 7, 2019.

Members of the Joint Procedure Committee:

Honorable Susan Bailey
Honorable Todd L. Cresap
Honorable Bradley A. Cruff
Honorable Rhonda Ehlis
Honorable Donald Hager
Honorable Gail H. Hagerty
Honorable Steven L. Marquart
Honorable Robin A. Schmidt
Honorable Barb Whelan

Mr. Bradley J. Beehler
Mr. Birch P. Burdick
Mr. Sean T. Foss
Mr. Mark A. Frieze
Prof. Margaret Moore Jackson
Ms. Carol K. Larson
Mr. Zachary E. Pelham
Ms. DeAnn Pladson
Ms. Lisa M. Six
Mr. Lloyd C. Suhr



Mike Hagburg, Staff Attorney
on behalf of Justice Lisa K. Fair McEvers
Chair

SYNOPSIS OF PROPOSED AMENDMENTS

A. North Dakota Rules of Civil Procedure

Rule 39.1 - Change in Location of a Hearing, Proceeding, or Trial; Change of Venue

An amendment to the explanatory note is proposed listing statutes that were superseded by the rule and statutes that were considered in the course of drafting the rule.

B. North Dakota Rules of Criminal Procedure

Rule 37 - Appeal as of Right to District Court; How Taken

An amendment to subdivision (k) is proposed to provide details on the district court's scope of review and action in an appeal from municipal court.

Form 9A - Appendix (A) Conditions for Sentence to Probation, Deferred, or Suspended Sentence

Amendments to Form 9A are proposed to improve the language and organization of the form so that it can be more easily understood.

C. North Dakota Rules of Appellate Procedure

Rule 2.2 - Termination of Parental Rights - Expedited Appeals

Amendments to the explanatory note are proposed to make it clear that all appeals from orders terminating parental rights must be expedited, including appeals under N.D.C.C. ch. 14-15.1 on child relinquishment.

Rule 4 - Appeal - When Taken

Amendments to the explanatory note are proposed to make it clear that appeals in termination of parental rights matters and appeals under N.D.C.C. ch. 14-15.1 on child relinquishment proceedings are expedited under Rule 2.2.

Rule 10 - The Record on Appeal

Amendments to subdivision (b) are proposed to require a party to designate how many electronic or paper copies of the transcript are to be prepared and to identify who is to receive which type of copy.

Rule 21 - Writs

Amendments to subdivision (b) are proposed to allow a response to a writ petition only when requested by the court.

D. North Dakota Rules of Evidence

Rule 615 - Excluding Witnesses

An amendment to subdivision (d) is proposed to replace the word “statute” with “law.”

E. North Dakota Supreme Court Administrative Rules

Rule 41 - Access to Court Records

An new Section 5(b)(8) is proposed to exclude addresses of jurors from public access.

RULE 39.1. CHANGE IN LOCATION OF A HEARING, PROCEEDING, OR TRIAL;
CHANGE OF VENUE

(a) Change in Location of a Hearing, Proceeding, or Trial.

(1) The court may change the location of a hearing, proceeding, or trial to a different county if:

(A) that county's seat is less than ten miles from the seat of the county of venue;

(B) there is reason to believe an impartial trial cannot be obtained in the county of venue; or

(C) considering such factors as the parties' and witnesses' convenience, judicial efficiency, and availability of appropriate facilities, the administration of justice is better served.

(2) If the location of a hearing, proceeding, or trial is changed, the parties must continue to file with the clerk of court for the county of venue, and the judge originally assigned must continue to preside over the action. If any party files an objection to the change of location no later than 14 days after the date of notification of the place of hearing, proceeding, or trial, the hearing, proceeding, or trial must be held where originally venued unless grounds exist for a change of venue under Rule 39.1(b). In a jury trial, the jury panel must be composed of residents of the original county of venue or residents of the judicial district under N.D.C.C. § 27-09.1-05.1.

(b) Change of Venue.

(1) The court may change the venue of an action or proceeding to another county within or outside a judicial district if:

(A) the county designated in the complaint is not the proper county of venue;

(B) there is reason to believe an impartial trial cannot be obtained in the county of venue; or

(C) the convenience of witnesses and the ends of justice will be promoted by the change.

(2) If venue is changed, the file must be transferred to the new county of venue and any additional papers must be filed in the new county of venue. If venue is changed to a county in a different judicial district, a new judge must be assigned to the action. In the case of a jury trial, the jury panel must be composed of residents of the new county of venue or residents of the judicial district under N.D.C.C. § 27-09.1-05.1.

EXPLANATORY NOTE

Rule 39.1 was adopted, effective March 1, 2002 and was amended effective March 1, 2011. The explanatory note was amended effective _____.

Under subdivision (a), the location of a hearing, proceeding, or trial is changed without a complete change in venue. Under subdivision (b), venue is changed and the file transferred to a new county of venue. The rule incorporates and supersedes statutory provisions governing change of venue.

In deciding to move a trial or proceeding, a trial court must consider N.D. Sup. Ct. Admin. R. 6(B) and 7(B).

Paragraph (a)(1) was amended, effective March 1, 2011, to increase the time to file an objection to the change of location of a hearing, proceeding, or trial from 10 to 14 days after the date of notification.

Rule 39.1 was amended, effective March 1, 2011, in response to the December 1, 2007, revision of the Federal Rules of Civil 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.

SOURCES: Joint Procedure Committee Minutes of September 28, 2018, pages 8-9; April 29-30, 2010, pages 6-7; September 28-29, 2000, pages 3-7; January 27-28, 2000, pages 13-15; September 23-24, 1999, pages 15-16; September 24-25, 1998, pages 16-17.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 28-04-07, 28-04-09, 28-04-10.

CONSIDERED: N.D.C.C. §§ 27-05-22, 27-05-23, 27-05-26, 27-09.1-05.1.

CROSS REFERENCE: ~~N.D.C.C. §§ 27-05-22 (District judges to act only within their districts-Exceptions); 27-05-26 (Change of venue);~~ N.D.R.Civ.P. 12 (Defenses and Objections; When and How; Motion for Judgment on the Pleadings; Consolidation and Waiving); N.D. Sup. Ct. Admin. R. 6 (Judicial Districts); N.D. Sup. Ct. Admin. R. 7 (Designation of Judgeships and Chambers with Assignments).

RULE 37. APPEAL AS OF RIGHT TO DISTRICT COURT; HOW TAKEN

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a municipal court to the district court may be taken only by filing a notice of appeal with the municipal court clerk within the time allowed by Rule 37(b).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for the district court to act as it considers appropriate, including dismissing the appeal.

(b) Time for Filing a Notice of Appeal.

(1) A defendant's notice of appeal must be filed with the municipal court clerk within 30 days after the entry of the judgment or order being appealed.

(2) If an appeal by the prosecution is authorized by statute, the notice of appeal must be filed with the municipal court clerk within 30 days after entry of judgment or order being appealed.

(c) Filing Before Entry of Judgment. A notice of appeal filed after the municipal court announces a decision, sentence, or order, but before the entry of the judgment or order, is treated as filed on the date of and after the entry.

(d) Effect of a Motion on a Notice of Appeal.

(1) If a defendant timely makes any of the following motions under the North Dakota Rules of Criminal Procedure, the notice of appeal from a judgment of conviction

must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period ends later:

(A) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

(B) for arrest of judgment under Rule 34.

(e) Extension of Time. Upon a finding of excusable neglect or good cause, the municipal court may, before or after the time has expired, with or without motion and notice, extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

(f) Content of the Notice of Appeal. The notice of appeal must:

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

(2) designate the verdict, judgment, order, or part thereof being appealed; and

(3) name the district court to which the appeal is taken.

(g) Serving the notice of appeal.

(1) The municipal court clerk must promptly serve notice of the filing of the notice of appeal by mailing or sending by third-party commercial carrier a copy of the notice of appeal to the clerk of district court and each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last-known address. The municipal court clerk must note on each copy the date the notice of appeal was filed.

(2) The municipal court clerk's failure to serve a copy of the notice of appeal does

not affect the validity of the appeal. The municipal court clerk must note on the docket the names of the parties to whom the clerk sends copies and the date they were sent. Service is sufficient despite the death of a party or the party's counsel.

(h) Transmittal to District Court. Within seven days after the notice of appeal is filed, the municipal court clerk, or the judge if there is no clerk, must transmit to the clerk of district court all documents filed in the action, which must be docketed by the clerk of district court without charge to the appellant.

(i) Designation of Parties on Appeal. A party appealing is the appellant and an opposing party is the appellee, but the title of the action is not changed as a consequence of the appeal.

(j) Effect and Scope of Appeal. A perfected appeal to the district court transfers the action for trial anew. An appeal from a judgment of conviction constitutes an appeal from any verdict of guilty upon which the judgment is rendered.

(k) Supervision in District Court. The supervision and control of the proceedings on appeal will be in the district court from the time an appeal is taken except as otherwise provided in these rules. The district court, at any time after an appeal is taken, may: (1) hear a motion to dismiss the appeal or direct the municipal court to modify or vacate any order made by the municipal court or by any judge relating to the prosecution of the appeal, including any order fixing or denying bail; (2) conduct a trial anew and affirm, reverse, modify or vacate the municipal court judgment or order, (3) correct an illegal sentence or a sentence imposed in an illegal manner; and (4) order judgment to be entered

64 in the district court.

65 (l) Summary Affirmance. If the appellant fails to appear at the trial anew, the
66 district court must summarily affirm the judgment and enter it as a judgment of the
67 district court unless the appellant on motion within seven days after the date set for the
68 trial anew shows good cause for failure to appear.

69 EXPLANATORY NOTE

70 Rule 37 was amended, effective September 1, 1983; March 1, 1986; January 1,
71 1995; March 1, 1999; March 1, 2003; March 1, 2006; March 1, 2008; March 1, 2011;
72 _____.

73 Rule 37 has no counterpart in the Federal Rules of Criminal Procedure. The
74 requirement for a rule of procedure for criminal appeals is necessary because the North
75 Dakota Rules of Appellate Procedure are limited in scope to appeals to the supreme court
76 while the scope of criminal rules includes the municipal courts. The rule is intended to
77 parallel as closely as possible the procedure of the appellate rules.

78 Rule 37 was amended, effective March 1, 2006, in response to the December 1,
79 2002, revision of the Federal Rules of Criminal Procedure. The language and
80 organization of the rule were changed to make the rule more easily understood and to
81 make style and terminology consistent throughout the rules.

82 Subdivision (a) parallels N.D.R.App.P. 3(a).

83 Subdivision (b) parallels N.D.R.App.P. 4(b)(1).

84 The requirement for filing the notice of appeal with the municipal court clerk

85 within 30 days of the entry of judgment or order being appealed is mandatory and
86 jurisdictional. The mandatory and jurisdictional requirement is eased by subdivision (e)
87 which permits the municipal court to extend the time for appeal upon a showing of
88 excusable neglect or good cause. The provision in Rule 32 that requires the defendant to
89 be advised of the right to appeal and the right of a person who is unable to pay the cost of
90 appeal to have it provided at public expense is a necessary part of a valid sentence and
91 until it is given, the 30-day period for taking an appeal cannot begin to run because there
92 is no valid sentence in existence.

93 Subdivision (d) is adapted from N.D.R.App.P. 4(b)(3) and addresses the effect of a
94 motion for a new trial or arrest of judgment on a notice of appeal.

95 Subdivision (e) is adapted from N.D.R.App.P. 4(b)(4) and authorizes an extension
96 of time to file a notice of appeal upon a finding of excusable neglect or good cause.

97 Subdivision (f) is adapted from the language of N.D.R.App.P. 3(c). A notice of
98 appeal must (1) specify the parties taking the appeal, (2) designate the verdict, judgment
99 or order or part thereof appealed from, and (3) name the court to which the appeal is
100 taken. Under the first requirement, it is important that the notice specify by name the
101 appellant or appellants. Failure of the notice to correctly designate the court to which the
102 appeal is taken does not vitiate it. Misnomer is immaterial, at least if it is obvious to
103 which district court the appeal must go. The requirement that the notice of appeal
104 designate the judgment or part thereof being appealed was designed to simplify the taking
105 of an appeal by requiring nothing more for its perfection than an identification of the

106 judgment by the date of its entry.

107 Subdivision (g) is adapted from N.D.R.App.P. 3(d), and provides for service of the
108 notice of appeal. Under this subdivision, the appellant is not obligated to serve the notice
109 of appeal on other parties to the action. It is the duty of the municipal court clerk (or
110 magistrate where there is no clerk) to serve notice of the filing of notice of appeal on the
111 clerk of district court and each party's counsel of record, and note on each copy served the
112 date on which the notice of appeal was filed.

113 Subdivision (g) allows the clerk to send the notice of the filing of the notice of
114 appeal via a commercial carrier as an alternative to mail.

115 Subdivision (h) establishes a seven-day maximum time limit for the municipal
116 court clerk, or judge where there is no clerk, to forward to the clerk of district court the
117 file with all documents filed in the action. Subdivision (h) was amended, effective March
118 1, 2011, to increase the time from five to seven days.

119 Subdivision (i) provides the designation of parties on appeal. It makes explicit that
120 the title of the action shall not be changed as a consequence of the appeal. The
121 designation of the party who contends against the appeal as an appellee rather than
122 respondent is intended to avoid confusion, especially in special proceedings.

123 Subdivision (j) defines the effect of appeal. This subdivision follows N.D.C.C. §
124 40-18-19 in providing for trial anew when an appeal is taken to the district court from the
125 municipal court.

126 Subdivision (k) provides the appellee may obtain relief from the appeal by one of

the methods stated. The provision contemplates the parties shall first apply to the municipal court for any relief regarding the appeal; however, once the appeal passes to the district court, the municipal court has no power to modify its judgment or dismiss the appeal.

Subdivision (k) was amended, effective _____, to provide details on the district court's scope of review and action upon an appeal. Any correction of an illegal sentence under this provision must be requested within the context of an appeal, not in a postconviction action. An appeal to district court may be returned to municipal court for disposition if the parties agree.

Subdivision (l) was added, effective March 1, 2008, to require the court to summarily affirm the judgment when an appellant fails to appear at a requested trial anew unless the appellant can show good cause for the failure to appear. Subdivision (l) was amended, effective March 1, 2011, to increase the time for an appellant to show good cause for failure to appear from five to seven days.

It should be noted although the rule does not always explicitly say so, it is the intent of this rule that the judge will perform the duties of the clerk where no clerk is appointed.

SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 2-3; September 28, 2018, pages 9-12; April 29-30, 2010, page 20; September 28-29, 2006, pages 8-10; January 27-28, 2005, pages 32-33; April 26-27, 2001, pages 4-6; January 29-30, 1998, page 20; April 28-29, 1994, pages 6-7; January 27-28, 1994, page 10;

September 23-24, 1993, page 10; November 29, 1984, page 20; February 17-18, 1983, pages 14-20; February 20-23, 1973, pages 5-8; December 11-15, 1972, pages 5-16; July 10-11, 1969, pages 4-6; May 15-16, 1969, pages 2-11; February 20-21, 1969, pages 15-17.

SEE ALSO: N.D. Const. art. VI, § 8.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-28-04, 29-28-08, 29-28-09, 29-28-11, 33-12-35, 33-12-40.

CONSIDERED: N.D.C.C. §§ 27-07-02, 27-07.1-18, 27-08-21, 28-27-06, 29-23-11, 29-28-02, 29-28-06, 29-28-07, 29-28-20, 29-28-21, 33-12-34, 33-12-41, 40-18-19.

CROSS REFERENCE: N.D.R.Crim.P. 32 (Sentencing and Judgment); N.D.R.Crim.P. 33 (New Trial); N.D.R.Crim.P. 34 (Arresting Judgment); N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.App.P. 3 (Appeal as of Right—How Taken); N.D.R.App.P. 4 (Appeal—When Taken).

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. _____ -20 -CR _____ County

Term of Probation _____ years / months

By Order of the Court:

While you are on probation, you must not:

☐ 1. ~~You must not violate~~ Violate any federal, tribal, state, county or municipal criminal law or ordinance ~~during the period of probation. This includes any violation of a federal, tribal, state, county or municipal criminal law or ordinance.~~

☐ 2. ~~You must not own, purchase, borrow, Use or 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 3a. ~~You must not use~~ Use or possess any alcoholic beverage; or 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~~ place licensed to sell or

22 serve alcoholic beverages.

23 (☐) 6 3b. You must refrain from excessive use of alcohol. Any excessive use of alcohol
24 or controlled substances will give your parole/probation officer the right to require you to
25 undergo an outpatient evaluation and abide by the recommendations of the evaluator. Use
26 alcohol to excess. Excessive use of alcohol is presumed if you have an alcohol
27 concentration of ____ percent or ~~higher~~ greater.

28 (☐) 7 4. You must not use Use or possess any non-prescribed a controlled substance
29 while on probation supervision that has not been prescribed for you or mis-use any
30 controlled substance that has been prescribed for you. You must not knowingly associate
31 with users or traffickers in narcotics, marijuana, or other controlled substances.

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

34 (☐) 9 5. You must not possess or use any type of Use or possess surveillance equipment
35 such as audio, video, and motion detectors, scanners or any type of surveillance or
36 counter surveillance equipment without prior written permission from your
37 parole/probation officer.

38 (☐) 6. Have any contact with _____. This includes telephone,
39 written, and electronic communication and contact through other people.

40 (☐) 7. Come within _____ yards of _____ or (his) (her)
41 residence.

42 (☐) 8. Willfully defraud a urine test administered as a condition of probation.

43 While you are on probation, you must:

44 () 9. Report to the probation office within 24 hours of sentencing or release from
45 custody.

46 () 10. You must inform your parole/probation officer in the manner that they direct of
47 any changes in your place of residence and employment, and other pertinent activities.

48 You must answer truthfully all reasonable inquiries by the parole/probation officer and
49 report to them as directed. This information must be furnished to the parole/probation

50 officer by written report, telephone, or a personal visit to their office. Your

51 parole/probation officer may visit your residence or place of employment at reasonable

52 hours. You must report within twenty-four hours to: _____

53 Stay in regular contact with your probation officer as you are instructed by the probation

54 officer. You must have the approval of your probation officer before you change your

55 address. You must inform your probation officer of any change of employment, or

56 telephone number. You must be truthful with your probation officer.

57 () 11. You must submit your person, place of residence and vehicle, or any other

58 property to which you may have access, to search and seizure at any time of day or night

59 by a parole/probation officer, with or without a search warrant Allow your probation

60 officer to visit your residence or place of employment.

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

62 in or outside the United States where you may be found, and you agree not to contest any

63 effort by any jurisdiction to return you to the State of North Dakota while this probation is

~~in effect~~ Allow your probation officer or other probation officers to search your person, place of residence, vehicle, or other property you have control over at any time of the day or night even if the probation officer doesn't have a search warrant. Your probation officer may request assistance of law enforcement officers to conduct a search.

() 13. ~~You must support your dependents~~ Continue with your present employment or seek and maintain suitable employment. You may attend school or training that will help you find better employment.

() 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.~~ Allow medical examination or other testing for the purpose of determining if you have used alcohol or controlled substances. This includes testing of breath, blood, saliva, urine or sweat.

() 16 15. ~~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.~~ Have a chemical addiction evaluation

or other diagnostic evaluation and follow any treatment recommendations. You may ask for a hearing if you disagree with treatment recommendations.

() 16. Waive extradition to North Dakota if you are arrested outside of North Dakota.

() 17. Provide support for your dependents.

() 18. You must pay 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 \$ Fine: _____;

b. Appointed Court-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 \$ Restitution: _____;

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 Pay a monthly 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) 55 for probation supervision.

() 20. You must pay the amount of Pay \$ _____ 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), 50 for preparation of the pre-sentence investigation

106 investigative report.

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

110 () 22. ~~You must submit to fingerprinting at the direction of your parole/probation~~
111 ~~officer. Be fingerprinted.~~

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

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

117 () 25 22. ~~You must provide~~ Provide a sample of blood or other body fluid for DNA
118 law enforcement ~~identification~~ purposes and ~~inclusion in law enforcement identification~~
119 ~~databases as required by N.D.C.C. ch. 31-13. You must pay the cost of the collection~~
120 collecting and processing of the DNA sample.

121 () 26 23. ~~You must attend, participate in, and successfully~~ Successfully complete:

122 _____ a. A cognitive restructuring program if your probation officer asks you to do so.

123 _____ b. Domestic violence offender treatment.

124 _____ c. An anger management program.

125 _____ d. _____ hours of community service.

126 () 27 24. ~~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. Participate in electronic monitoring~~
~~and follow all of the rules of the electronic monitoring system as required by your~~
~~probation officer.~~

() ~~28~~ 25. You must perform _____ hours of community service to be completed as
follows: _____. Complete any intermediate condition which you
agree to complete to avoid revocation of probation.

While on probation you must have the written approval from your probation officer
before you:

() ~~29~~ 26. You must not

a. Associate with anyone you know to be a felon.

b. Associate with known drug users or traffickers.

c. leave the State of North Dakota without permission of your probation officer.

() ~~30~~ 27. Other conditions of probation: _____.

~~Dated (Month) (Day), (Year):~~

BY THE COURT,

Date: _____

_____.

148 JUDGE

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

155 The conditions of probation have been explained to me. I agree to follow the conditions
156 which are listed and checked. I know that if I don't follow the conditions of probation, my
157 probation may be revoked and I could be re-sentenced to any sentence which could have
158 been imposed at the time I was sentenced.

159 ~~Dated (Month) (Day), (Year):~~

160 Date: _____

161 _____.

162 Probationer

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

166 The conditions of probation have been explained to my client by the Judge. My client has
167 indicated (he)(she) understands the conditions of probation.

168 ~~Dated (Month) (Day), (Year):~~

169 Date:_____

170 _____.

171 Defense Attorney

172 ~~Original to Court file ____ 1 Certified copy to Warden/Superintendent of NDSP, TRCU,~~

173 ~~MRCC—if imprisonment is ordered~~

174 ~~____ 1 Certified copy to Sheriff/Jail Administrator—if county imprisonment is ordered~~

175 ~~____ 1 Copy to Defendant~~

176 ~~____ 1 Copy to State's Attorney~~

177 ~~____ 1 Copy to Local Probation Officer—if on supervised probation~~

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 the supreme 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

must be served upon the opposing party at the time of filing. The appellee's brief must be served and filed no later than 21 days after service of the appellant's brief.

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

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

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

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

EXPLANATORY NOTE

Rule 2.2 was adopted, effective March 1, 2009; March 1, 2011; Oct 1, 2014. The explanatory note was amended, effective _____.

All appeals from orders terminating parental rights must be made under this rule, including appeals under N.D.C.C. ch. 14-15.1 on child relinquishment.

Subdivision (a) was amended, effective Oct 1, 2014, to provide for the filing of the notice of appeal in the supreme court.

Paragraph (e)(1) was amended, effective March 1, 2011, to increase the time to serve and file an appellee's brief from 15 to 21 days after service of the appellant's brief.

Subdivision (f) was amended, effective March 1, 2011, to increase the time to file a motion from five to seven days.

Sources: Joint Procedure Committee Minutes of April 26, 2019, page 19; September 26, 2013, pages 13-14; April 29-30, 2010, page 20; April 24-25, 2008, pages 9-11.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 14-15.1.

RULE 4. APPEAL—WHEN TAKEN

(a) Appeal in Civil Case.

(1) Time For Filing Notice of Appeal. In a civil case, except as provided in paragraph (a)(4), the notice of appeal required by Rule 3 must be filed with the clerk of the supreme court within 60 days from service of notice of entry of the judgment or order being appealed.

(2) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this subdivision, whichever period ends later.

(3) Effect of Motion on Notice of Appeal.

(A) If a party files with the clerk of district court any of the following motions under the North Dakota Rules of Civil Procedure, however titled, and does so within the time allowed by those rules, the full time to file an appeal runs for all parties from service of notice of the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b) ;

(ii) to amend or make additional factual findings under Rule 52(b) , whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is served and filed no later than 28 days after notice of entry of judgment;

(B)

(i) If a party files with the clerk of district court any motion listed in subparagraph (a)(3)(A) after a notice of appeal is filed, the party filing the motion must notify the clerk of the supreme court in writing, and the court may remand the case to the district court to decide the motion. The supreme court retains jurisdiction on remand unless it expressly dismisses the appeal. If the supreme court remands and retains jurisdiction, the parties must promptly notify the supreme court clerk when the district court has decided the motion on remand.

(ii) A party intending to challenge an order disposing of any motion listed in subparagraph (a)(3)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal, in compliance with Rule 3(c), within the time prescribed by this rule measured from the service of notice of the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(4) Motion for Extension of Time.

(A) The supreme court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by subdivision (a) expires; and
- (ii) that party shows excusable neglect or good cause.

(B) If a motion for extension of time is filed, notice must be given to the other parties.

(C) No extension under paragraph (a)(4) may exceed 30 days after the prescribed time.

(b) Appeal in Criminal Case.

(1) Time for Filing Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed with the clerk of the supreme court within 30 days after the entry of the judgment or order being appealed.

(B) If an appeal by the state is authorized by statute, the notice of appeal must be filed with the clerk of the supreme court within 30 days after the entry of the judgment or order being appealed.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the district court announces a decision, sentence, or order, but before the entry of the judgment or order, is treated as filed on the date of and after the entry.

(3) Effect of Motion on Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the North Dakota Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period ends later:

64 (i) for a new trial under Rule 33, but if based on newly discovered evidence, only
65 if the motion is made no later than 30 days after the entry of the judgment;

66 (ii) for arrest of judgment under Rule 34.

67 (B) If the defendant files with the clerk of district court any motion listed in
68 subparagraph (b) (3) (A) after a notice of appeal is filed, the defendant must notify the
69 clerk of the supreme court in writing, and the court may remand the case to the district
70 court for disposition of the motion.

71 (C) A notice of appeal filed after the district court announces a decision, sentence,
72 or order, but before it disposes of any of the motions referred to in subparagraph (b) (3)
73 (A) , becomes effective upon the later of the following:

74 (i) the entry of the order disposing of the last such remaining motion;

75 (ii) the entry of the judgment of conviction.

76 (D) A valid notice of appeal is effective, without amendment, to appeal from an
77 order disposing of any of the motions referred to in subparagraph (b) (3) (A).

78 (4) Motion for Extension of Time. Upon a finding of excusable neglect or good
79 cause, the supreme court may—before or after the time has expired, with or without
80 motion and notice—extend the time to file a notice of appeal for a period not to exceed 30
81 days from the expiration of the time otherwise prescribed by this subdivision.

82 (5) Jurisdiction. The filing of a notice of appeal under this subdivision does not
83 divest a district court of jurisdiction to correct a sentence under N.D.R.Crim.P. 35(a) , nor
84 does the filing of a motion under Rule 35(a) affect the validity of a notice of appeal filed

85 before entry of the order disposing of the motion. The filing of a motion under
86 N.D.R.Crim.P. 35(a) does not suspend the time for filing a notice of appeal from a
87 judgment of conviction.

88 (6) Entry Defined. A judgment or order is entered for purposes of this subdivision
89 when it is entered on the criminal docket.

90 (c) Appeal in Contempt Case. A notice of appeal must be filed with the clerk of the
91 supreme court within 60 days after entry of the judgment or order being appealed. Upon a
92 finding of excusable neglect or for good cause, the district court may, before or after the
93 time has expired, with or without motion and notice, extend the time for filing a notice of
94 appeal for a period not to exceed 30 days from the expiration of the time otherwise
95 prescribed by this subdivision.

96 (d) Appeal in Post-Conviction Proceeding. A notice of appeal must be filed with
97 the clerk of the supreme court within 60 days of service of notice of entry of the judgment
98 or order being appealed. Upon a finding of excusable neglect or good cause, the supreme
99 court may, before or after the time has expired, with or without motion and notice, extend
100 the time for filing a notice of appeal for a period not to exceed 30 days from the
101 expiration of the time otherwise prescribed by this subdivision.

102 (e) Appeal in Proceeding Under Uniform Juvenile Court Act. Except for an appeal
103 in a termination of parental rights proceeding, a notice of appeal in a proceeding under
104 the Uniform Juvenile Court Act must be filed with the clerk of the supreme court within
105 30 days of service of notice of entry of the judgment, order or decree being appealed.

106 Upon a finding of excusable neglect or good cause, the supreme court may, before or
107 after the time has expired, with or without motion and notice, extend the time for filing a
108 notice of appeal for a period not to exceed 30 days from the expiration of the time
109 otherwise prescribed by this subdivision.

110 (f) Mistaken Filing in District Court. If a notice of appeal in either a civil or a
111 criminal case is mistakenly filed in the district court, the clerk of district court must note
112 on the notice the date when it was received and send it to the clerk of the supreme court.
113 The notice is then considered filed in the supreme court on the date so noted.

114 EXPLANATORY NOTE

115 Rule 4 was amended, effective March 1, 1986; March 1, 1994; March 1, 1997;
116 March 1, 1998; March 1, 1999; August 1, 2001; March 1, 2003; March 1, 2007; March 1,
117 2008; March 1, 2011; May 4, 2011; March 1, 2012; Oct 1, 2014; March 1, 2018. The
118 explanatory note was amended effective_____.

119 The time for civil appeals runs from "service of notice of entry" of the order or
120 judgment. However, service of notice of entry of judgment is not necessary to start the
121 time running for filing a post-judgment motion or appeal if the record clearly evidences
122 actual knowledge of entry of judgment by the affirmative action of the moving or
123 appealing party. See N.D.R.Civ.P. 58(b).

124 The responsibility under subdivision (a) is shifted to counsel to serve the notice
125 and commence the period for appeal. This differs from the federal rule, which provides
126 the time for appeal is to run from "the date of entry."

127 The time limit for taking an appeal does not prevent the taking of an appeal at any
128 time after the entry of the judgment or order and before service of notice of entry.

129 Rule 4 was amended, effective Oct 1, 2014, to conform the rule for filing of the
130 notice of appeal in the supreme court.

131 Subdivision (a) was amended, effective March 1, 1999, to provide the 30 day
132 extension for excusable neglect is to be added to the time for appeal provided by the
133 statute or rule setting the time for appeal. A party seeking an extension of time to appeal
134 should file a notice of appeal with the motion for extension.

135 Subparagraph (a)(3)(A) was amended, effective Oct 1, 2014, to add the words
136 "however titled" to the language authorizing extension of the appeal period for the filing
137 of certain motions. This amendment is intended to make clear that the substance and not
138 the title of the motion should control. Therefore, a post-judgment motion under any of the
139 listed rules, whether titled as a motion to alter, amend, or vacate, for relief from judgment,
140 or for reconsideration, will toll the time period to file a notice of appeal.

141 Subparagraph (a)(3)(A) was amended, effective March 1, 2018, to clarify that only
142 a motion filed within the time allowed by the North Dakota Rules of Civil Procedure will
143 toll the appeal time.

144 Subparagraph (a)(3)(A)(vi) was amended, effective March 1, 2011, to increase the
145 time to file a Rule 60 motion from 15 to 28 days after notice of entry of judgment.

146 Subparagraph (a)(3)(B) was amended, effective March 1, 2012, to provide that the
147 supreme court retains jurisdiction when remanding a case to the district court to decide a

148 motion unless the supreme court expressly dismisses the appeal.

149 Subparagraph (a)(3)(B)(ii) was amended, effective March 1, 2011, to track the
150 2009 amendments to Fed.R.App.P. 4. The amendment changed the phrase "judgment
151 altered or amended" to "judgment's alteration or amendment."

152 Subdivision (b) was amended, effective March 1, 2003, to increase the time for a
153 criminal defendant to appeal from 10 days to 30 days.

154 Subdivision (b) was amended, effective March 1, 2008, to clarify that the time for
155 appeal continues to run even if a motion to correct a sentence under N.D.R.Crim.P. 35 is
156 filed.

157 Subdivision (d) was adopted, effective August 1, 2001, to provide a time for
158 appeal in a post-conviction proceeding.

159 Subdivision (e) was adopted, effective March 1, 2007, to clarify the time for
160 appeal in a proceeding under the Uniform Juvenile Court Act. Requests for extension of
161 time in juvenile cases must be directed to the supreme court.

162 Subdivision (e) was amended, effective May 4, 2011, to specify that appeals in
163 termination of parental rights proceedings are not governed by the appeal deadlines in this
164 rule. Appeals in termination of parental rights matters and appeals under N.D.C.C. ch. 14-
165 15.1 on child relinquishment proceedings are expedited under Rule 2.2.

166 Subdivision (f) was amended, effective Oct 1, 2014, to provide a procedure to be
167 used when a notice of appeal is mistakenly filed in district court.

168 Rule 4 was amended, effective March 1, 2003, in response to the December 1,

1998, amendments to Fed.R.App.P. 4. 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.

Rule 4 was amended, effective Oct 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court."

SOURCES: Joint Procedure Committee Minutes of April 26, 2019, page 19; April 27, 2017, page 22; September 26, 2013, pages 14-15, pages 29-30; April 28-29, 2011, page 18; April 29-30, 2010, page 23; January 25, 2007, page 16; September 22-23, 2005, pages 25-26; April 26-27, 2001, pages 4-5; September 28-29, 2000, pages 10-13; January 27-28, 2000, pages 4-9; September 23-24, 1999, pages 11-12; April 30-May 1, 1998, page 13; January 30, 1997, page 8; January 25-26, 1996, pages 7-10; April 29-30, 1993, pages 2-3, 16-18; November 29, 1984, pages 19-20; April 26, 1984, pages 23-24; January 20, 1984, pages 10-15; September 18-19, 1980, page 20; January 12-13, 1978, page 25; Fed.R.App.P. 4

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 28-27-04.

CONSIDERED: N.D.C.C. ch. 14-15.1; § 27-20-56.

CROSS REFERENCE: N.D.R.App.P. 2.2 (Termination of Parental Rights - Expedited Appeals)

RULE 10. THE RECORD ON APPEAL

(a) Composition of Record on Appeal. The following items constitute the record on appeal:

(1) the documents and exhibits filed in the district court, including the notice of appeal as filed in Odyssey by the clerk of the supreme court;

(2) an electronic copy of the transcript in portable document format (PDF), if any; and

(3) certification prepared by the clerk of district court stating what constitutes the record filed in the district court.

(b) Order for Transcript of Proceeding.

(1) Appellant's Duty to Order. If an appeal is taken in a case in which an evidentiary hearing was held, the appellant must order a transcript of the proceedings as follows:

(A) an electronic copy of the transcript in portable document format (PDF) must be ordered for the supreme court;

(B) one copy of the transcript must be ordered for each self-represented party and each party separately represented;

(C) a complete transcript must be ordered, unless a stipulation is obtained from all affected parties specifying the portions that are not required for the purposes of the appeal;

(D) a transcript of any record of jury voir dire is not required, unless specifically requested by a party; and

(E) the order for a transcript, and a copy of the stipulation of excluded portions, if applicable, must be filed with the clerk of the supreme court with the notice of appeal.

(2) Information for Order. An order for a transcript must include the following information:

(A) the caption of the case;

(B) the date or dates of trial;

(C) the number of copies required; and

(D) the names and addresses or e-mail addresses of the parties to be served ~~with~~ and whether they are to be served with portable document format PDF or paper copies.

(3) Unreasonable Refusal to Stipulate. If a party affected by the appeal unreasonably refuses to stipulate to exclude from the transcript portions of the record not necessary to the resolution of the issues raised by the appellant, the party proposing the stipulation may apply to the district court for an order requiring the refusing party to pay for the unnecessary portions of the transcript and reasonable attorney's fees for making the application.

(4) Clerk of District Court to Transmit Order. Within seven days after an order for transcript is filed and any required docket fee is paid, the clerk of the supreme court must electronically transmit the order to the clerk of district court. The clerk of district court must promptly electronically transmit the order to the person designated by the district

court to prepare the transcript.

(c) Preparation of Transcript.

(1) Time for Furnishing Transcript. Within 60 days after the date the order for transcript is electronically transmitted by the clerk of district court, the person preparing the transcript must complete the transcript and file it electronically with the clerk of the supreme court clerk in portable document format (PDF) unless an extension of time is received under subdivision (d). In expedited appeals, when a transcript is ordered, the person preparing the transcript must promptly complete the transcript and file it electronically with the clerk of the supreme court unless otherwise directed by the supreme court.

(2) Submission of Transcript.

(A) The person preparing the transcript must serve and file the transcript as follows:

(i) a copy of the transcript must be served on each party designated in the order for transcript;

(ii) proof of service of the transcript must be filed by electronic means with the clerk of the supreme court; and

(iii) an electronic copy of the transcript in portable document format (PDF) must be electronically transmitted to the clerk of the supreme court. All electronic transcripts must contain in a single file all the information contained in the paper transcript, including the cover, table of contents, and certifications, in the same order as in the paper

transcript. The electronic transcript must include fixed line number and page numbers corresponding to those in the paper transcript.

(B) In an appeal of the determination of an administrative agency, the agency must file an electronic copy of the transcript in portable document format (PDF) or electronically transmit the transcript to the clerk of the supreme court unless the agency certifies the transcript was not prepared on a computer or word processor.

(3) Financial Arrangements. The appellant or a party obligated under paragraph (b) (3) to pay transcription costs must provide advance payment for the estimated cost of preparing the transcript, provided:

(A) the person preparing the transcript serves a written estimate of the cost and a demand for payment on the appellant within 14 days after receipt of the order for transcript; or

(B) the person preparing the transcript serves a written estimate of the cost and a demand for payment on a party obligated by court order to pay transcription costs within 14 days after receipt of the order.

If the person preparing the transcript fails to serve a timely written estimate and a timely demand for payment, the right to demand advance payment is waived. Advance payment is not required if transcription costs are to be paid by the state or an agency or subdivision of the state. If the appellant or obligated party fails to make the advance payment within 14 days after service of the demand, the person preparing the transcript may suspend preparation of the transcript until paid.

85 (d) Extension of Time.

86 (1) Good Cause. If the person preparing the transcript is unable to complete and
87 file the transcript within 60 days after the order for transcript is electronically transmitted
88 to the preparer, the district court for good cause shown may extend the time for
89 completion of the transcript. If preparation of the transcript has been suspended for failure
90 of any party to make a timely advance payment upon demand, the district court for good
91 cause shown by the party responsible for the delay, may extend the time for completion of
92 the transcript, on such terms as the court may order.

93 (2) Request for Extension. A request for an extension of time must be made within
94 the time originally prescribed or within an extension previously granted for completion of
95 the transcript. A district court may not extend the time for more than 90 days after the
96 order for transcript is electronically transmitted to the preparer. If the district court is
97 without authority to grant the relief sought or has denied a request for an extension of
98 time, the supreme court may on motion for good cause shown extend the time for
99 completion of the transcript beyond the time allowed or fixed. If a request for an
100 extension of time has been previously denied, the motion must set forth the denial and
101 state the reasons for the denial, if any were given by the district court.

102 (e) Form of Transcript. Each transcript must conform to the requirements of Rules
103 31(b) (2) and 32 except as otherwise provided:

104 (1) lines must be numbered on the left margin;

105 (2) each page may not contain more than 27 lines or less than 25 lines;

- (3) the left margin may not be more than 1 3/4 inches wide;
- (4) the right margin may not be more than 3/8 inches wide;
- (5) each question and answer must begin on a new line;
- (6) an indentation for a new speaker or paragraph may not be more than 10 spaces from the left margin;
- (7) each volume must be indexed as to every witness and exhibit;
- (8) each page must be numbered consecutively;
- (9) the accuracy of the transcript must be certified by the person preparing the transcript.

(f) Statement of Evidence When Proceedings Not Recorded or When Transcript Unavailable. If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be filed with the district court for settlement and approval. As settled and approved, the statement must be filed with the clerk of the supreme court by the appellant within 60 days after the notice of appeal is filed.

(g) Agreed Statement as Record on Appeal. In place of the record on appeal as defined in subdivision (a) , the parties may prepare, sign, and file with the district court a statement of the case showing how the issues presented by the appeal arose and were

127 decided in the district court. The statement must set forth only those facts averred and
128 proved or sought to be proved that are essential to the supreme court's resolution of the
129 issues. If the statement is truthful, it, together with any additions that the district court
130 may consider necessary to a full presentation of the issues on appeal, must be approved by
131 the district court and must then be certified to the supreme court as the record on appeal.
132 The clerk of district court must then file the statement with the supreme court within the
133 time provided by Rule 11.

134 (h) Correction or Modification of Record.

135 (1) If any difference arises about whether the record truly discloses what occurred
136 in the district court, the difference must be submitted to and settled by the district court
137 and the record conformed accordingly.

138 (2) If anything material to either party is omitted from or misstated in the record by
139 error or accident, the omission or misstatement may be corrected and a supplemental
140 record may be certified and forwarded:

141 (A) on stipulation of the parties; or

142 (B) by the district court before or after the record has been forwarded.

143 The supreme court, on proper suggestion or of its own initiative, may direct that an
144 omission or misstatement be corrected, and, if necessary, that a supplemental record be
145 certified and transmitted. All other questions as to the form and content of the record must
146 be presented to the supreme court.

147 EXPLANATORY NOTE

Rule 10 was amended, effective 1978; March 1, 1986; January 1, 1995; March 1, 1998; March 1, 1999; March 1, 2001; technical amendments effective August 1, 2001; March 1, 2003; March 1, 2004; March 1, 2005; March 1, 2008; March 1, 2011; October 1, 2014;_____.

Rule 10 was amended, effective January 1, 1995. The amendment allows a transcript to be prepared and certified from an electronic recording by someone other than the operator of recording equipment or a court reporter.

Rule 10 was amended, effective March 1, 2003. The language and organization of the rule were changed to make the rule more easily understandable and to make style and terminology consistent throughout the rules.

Subdivisions (a), (b), and (c) were amended, effective October 1, 2014, to require that an electronic copy of the transcript in portable document format (PDF) be filed in the supreme court. When the mandate of the supreme court is issued, an electronic copy of the transcript will be filed in Odyssey.

Subdivision (b) was amended, effective March 1, 2004, to eliminate any requirement to obtain a transcript of the voir dire record, unless such a transcript is specifically requested by a party.

Subdivision (b) was amended, effective March 1, 2008, to require that a copy of the transcript be ordered for each self-represented party.

Paragraph (b)(2) was amended, effective _____, to require a party to designate how many electronic or paper copies of the transcript are to be prepared and

169 identify who is to receive which type of copy.

170 Paragraph (b)(4) was amended, effective March 1, 2011, to increase the time for a
171 clerk to transmit the order for transcript from three to seven days.

172 Subdivision (c) was amended, effective March 1, 2008, to eliminate references to
173 computer diskettes.

174 Paragraph (c)(1) was amended, effective October 1, 2014, to allow 60 days after
175 the order for transcript is transmitted to the preparer for the transcript to be prepared.

176 Paragraph (c)(3) was amended, effective March 1, 2011, to increase the time
177 periods regarding transcription costs from 10 to 14 days.

178 Subdivision (d) was amended, effective October 1, 2014, to indicate that the time
179 begins to run on the transcript preparation period when the order for transcript is
180 transmitted to the preparer.

181 Subdivision (f) was amended, effective March 1, 2011, to increase the time for an
182 appellee to serve objections or propose amendments to a statement of the proceedings
183 from 10 to 14 days.

184 Rule 10 was amended, effective October 1, 2014, to replace "supreme court clerk"
185 with "clerk of the supreme court" and "paper" with "document."

186 SOURCES: Joint Procedure Committee Minutes of September 28, 2018, pages 2-
187 5; September 26, 2013, pages 16-20; April 29-30, 2010, page 20; January 25, 2007, page
188 16; January 30-31, 2003, pages 3-4; September 26-27, 2002, pages 14-15; April 26-27,
189 2001, pages 8-9; January 27-28, 2000, pages 9-12; September 23-24, 1999, pages 19-21;

January 30, 1997, pages 9-10; September 26-27, 1996, page 18; April 28-29, 1994, pages 3-4; January 27-28, 1994, page 18; September 23-24, 1993, pages 20-21; March 28-29, 1985, pages 13-14; November 29, 1984, pages 5-6; May 25-26, 1978, pages 7-8; March 16-17, 1978, pages 1, 2, 9-13; January 12-13, 1978, pages 14-15; October 27-28, 1977, pages 2-3; September 15-16, 1977, pages 5-8, 16-18; June 2-3, 1977, pages 2-4.

Fed.R.App.P. 10.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § § 28-18-04, 28-18-05, 28-18-06, 28-18-07, 28-18-08, 28-27-07, 28-27-33, 29-23-01, 29-23-02, 29-23-03, 29-23-04, 29-23-08, 29-23-09.

CROSS REFERENCE: N.D.R.App.P. 3 (Appeal as of Right—How Taken) , N.D.R.App.P. 7 (Bond for Costs on Appeal in Civil Cases) , N.D.R.App.P. 11 (Transmission and Filing of the Record) , and N.D.R.App.P. 12 (Docketing the Appeal).

RULE 21. WRITS

(a) Petition, Filing, and Service.

(1) A party seeking a writ must file a petition with the clerk of the supreme court and serve the petition on all parties to the proceeding in the district court. The party must also provide a copy to the district court judge.

(2) The petition must state:

(A) the relief sought;

(B) the issues presented;

(C) the facts necessary to understand the issues presented; and

(D) the reasons why a writ should issue.

(3) The petition must be accompanied by a copy of any order or opinion and other parts of the record that are necessary to understand the matters set forth in the petition.

(A) If a petition is supported by briefs, affidavits, or other documents, they must be served and filed with the petition.

(B) Supporting documents must be contained in a separately bound appendix in the format specified in Rule 25, Rule 30(d) and Rule 32(b).

(b) Action; Response to Petition; Briefs.

(1) The court may act on a petition without a response. Otherwise, the court will fix a time for a response and may set a hearing. Unless the court requests, no response to a petition is permitted.

22 (2) Two or more parties may respond jointly to a petition.

23 (3) The court may invite or order the district court judge to respond to a petition or
24 may invite an amicus curiae to do so.

25 (c) Form of Documents; Number of Copies. A petition and any response must
26 contain all applicable items listed in Rule 28(b). All documents must conform to Rule 25,
27 if applicable, and Rule 32. If filed by mail or third-party commercial carrier, an original
28 and seven copies must be filed unless the court requires the filing of a different number in
29 a particular case. If filed electronically, one electronic copy of all documents must be
30 filed.

31 (d) Fees. A docket fee is due at the time of filing, unless exempted under Rule 12.
32 Any reproduction fee is due within seven days of filing.

33 EXPLANATORY NOTE

34 Rule 21 was adopted, effective March 1, 2004; amended effective October 1,
35 2014;_____.

36 It Rule 21 was designed to clarify supervisory writ procedure in the supreme court.

37 Rule 21 was amended, effective October 1, 2014, to make the rule applicable to all
38 writs filed in the supreme court and to clarify that fees apply to filing.

39 The supreme court has power under art. VI, § 2, of the North Dakota Constitution
40 to issue original and remedial writs. Under N.D.C.C. § 27-02-04, the supreme court has
41 supervisory power over inferior courts and may issue writs in the exercise of this power.

42 A petition for a supervisory writ is not an alternative to an appeal. The supreme

43 court will issue a supervisory writ only to rectify errors and prevent injustice when no
44 adequate alternative remedy exists.

45 This rule does not limit the supreme court's authority to exercise its supervisory
46 power.

47 Other extraordinary writs are set out in the North Dakota Century Code. See
48 N.D.C.C. 32-22, for writ of habeas corpus; N.D.C.C. ch. 32-34, for writ of mandamus;
49 N.D.C.C. ch. 32-35, for writ of prohibition; N.D.C.C. ch. 32-33, for writ of certiorari; and
50 N.D.C.C. ch. 32-06 for writ of injunction.

51 Subdivision (a) and (c) were amended, effective October 1, 2014, to conform the
52 rule to electronic filing.

53 Subdivision (b) was amended, effective _____, to allow a response to a
54 petition only when requested by the court.

55 Subdivision (c) requires that a supervisory writ petition or any petition response
56 must contain the elements specified in Rule 28 (b) that apply to the given document. For
57 example, a petition that cites legal authorities must include a table of authorities as
58 described in Rule 28 (b)(2).

59 Subdivision (d) was added, October 1, 2014, to clarify that a docket fee must be
60 paid when a writ petition is filed with the supreme court.

61 Rule 21 was amended, effective October 1, 2014, to replace "supreme court clerk"
62 with "clerk of the supreme court" and "paper" with "document."

63 SOURCES: Joint Procedure Committee Minutes of September 28, 2018, page 16;

64 September 26, 2013, page 22; April 24-25, 2003, page 14; January 30-31, 2003, pages
65 16-18.

66 CROSS REFERENCE: N.D. Const. art. VI, § 2; N.D.C.C. § 27-02-04;
67 N.D.R.App.P. 28 (Briefs); N.D.R.App.P. 30 (Appendix to the Briefs); N.D.R.App.P. 32
68 (Form of Briefs, Appendices and Other Documents).

RULE 615. EXCLUDING WITNESSES

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony, or the court may do so on its own. This rule does not authorize excluding:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or

(d) a person authorized by ~~statute~~ law to be present.

EXPLANATORY NOTE

Rule 615 was amended, effective March 1, 1990; March 1, 2014;

_____.

Rule 615 is based on Fed.R.Ev 615. It provides that it is mandatory for a court to exclude witnesses when so requested by a party, subject to stated exceptions.

Subdivision (d) was amended, effective _____, to replace “statute” with “law.”

Rule 615 was amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 615 was amended, effective March 1, 2014, in response to the December 1,

2011, revision of the Federal Rules of Evidence. 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. There is no intent to change any result in any ruling on evidence admissibility.

SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 7-8;
September 28, 2018, pages 13-14; April 26-27, 2012, pages 27-29; March 24-25, 1988,
page 12; December 3, 1987, pages 15-16; June 3, 1976, page 5; October 1, 1975, page 6.
Fed.R.Ev. 615; Rule 615, SBAND proposal.

STATUTES AFFECTED:

CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. §§ 12.1-34-02, 29-07-13,
29-07-14.

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

22 this rule; and

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

24 (c) "Public access" means that the public may inspect and obtain a copy of the
25 information in a court record, except as excluded under Section 5.

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

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

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

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

35 (1) electronic representations of text or graphic documents;

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

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

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

41 Section 3. General Access Rule.

42 (a) Public Access to Court Records.

43 (1) Court records are accessible to the public except as prohibited by this rule.

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

47 (3) A court may not adopt a more restrictive access policy or otherwise restrict
48 access beyond that provided for in this rule, nor provide greater access than that provided
49 for in this rule or as governed by N.D. Sup. Ct. Admin. R. 40 with respect to recordings
50 of trial court proceedings.

51 (b) When Court Records May Be Accessed.

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

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

61 (3) The clerk of court is not required to search within a court record for specific
62 information that may be sought by a requestor.

63 (c) Access to Court Records Filed Before March 1, 2009. Court records filed

64 before the adoption of N.D.R.Ct. 3.4 may contain protected information listed under
65 N.D.R.Ct. 3.4(a). This rule does not require the review and redaction of protected
66 information from a court record that was filed before the adoption of N.D.R.Ct. 3.4 on
67 March 1, 2009.

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

73 Section 4. Methods of Access to Court Records.

74 (a) Access to Court Records at Court Facility.

75 (1) Public Access Terminal. A terminal will be available at each county courthouse
76 for public access to court records stored statewide in the Odyssey system.

77 (2) Request for Access to Other Records. Any person desiring public access to a
78 court record that is not available on the public access terminal must make an oral or
79 written request to the clerk of court. If the request is oral, the clerk may require a written
80 request if the clerk determines that the disclosure of the record is questionable or the
81 request is so involved or lengthy as to need further definition. The request must clearly
82 identify the record requested so that the clerk can locate the record without doing
83 extensive research. Continuing requests for a document not yet in existence may not be
84 considered.

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

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

(b) Remote Access to Court Records.

(1) In General. 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:

(A) litigant/party indexes to cases filed with the court;

(B) listings of new case filings, including the names of the parties;

(C) register of actions showing what documents have been filed in a case;

(D) calendars or dockets of court proceedings, including the case number and

caption, date and time of hearing, and location of hearing; and

(E) 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.

(2) Access Regulation.

(A) The Supreme Court may adopt and implement policies to regulate remote access to court records. These policies must be posted publicly on the Court's website.

(B) Attorneys licensed in North Dakota may apply to obtain remote access to court records stored in the Odyssey system.

(C) A record of a closed criminal case for which there is no conviction may not be remotely accessed through a name search except by an attorney granted remote access to the Odyssey system.

(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 when 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.

(3) A court may allow a party to a bulk distribution agreement access to birth date,

street address, and social security number information if the party certifies that it will use the data for legitimate purposes as permitted by law.

(d) Access to Compiled Information From Court Records.

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

(2) Requesting compiled restricted information.

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

(B) The request must:

- (i) identify what information is sought ,
- (ii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and
- (iii) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

(C) The court may grant the request and compile the information if it determines

that doing so meets criteria established by the court and is consistent with the purposes of this rule, the resources are available to compile the information, and that it is an appropriate use 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 N.D.C.C. §§ 29-05-32 or 29-29-22;

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

(4) case information and documents in Child Relinquishment to Identified Adoptive Parent cases brought under N.D.C.C. ch. 14-15.1;

(5) 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;

(6) documents in domestic violence protection order and disorderly conduct restraining order cases in which the initial petition was dismissed summarily by the court without a contested hearing;

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

(8) addresses of jurors;

~~(8)~~ (9) records of voir dire of jurors, unless disclosure is permitted by court order or rule;

~~(9)~~ (10) records of deferred impositions of sentences or pretrial diversions resulting in dismissal;

~~(10)~~ (11) records of a case in which the magistrate finds no probable cause for the issuance of a complaint;

~~(11)~~ (12) unless exempted from redaction by N.D.R.Ct. 3.4(c), protected

information:

(A) except for the last four digits, social security numbers, taxpayer identification numbers, and financial account numbers,

(B) except for the year, birth dates, and

(C) except for the initials, the name of an individual known to be a minor, unless the minor is a party, and there is no statute, regulation, or rule mandating nondisclosure;

~~(12)~~ (13) 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;

~~(13)~~ (14) party, witness and crime victim contact information gathered and recorded by the court for administrative purposes, including telephone numbers and e-mail, street and postal addresses;

~~(14)~~ (15) the name of a patron of the North Dakota Legal Self Help Center or information sufficient to identify a patron or the subject about which a patron requested information;

~~(15)~~ (16) The property and debt listing of the parties to a divorce as provided by N.D.C.C. § 14-05-24.3.

(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 the court 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.

(6) If a victim requests, all victim contact information in a criminal court record must be redacted;

(7) If the court concludes, after conducting the balancing analysis and making findings as required by paragraphs (1) through (5), that the interest of justice will be served, it may prohibit public Internet access to an individual defendant's electronic court record in a criminal case:

(A) if the charges against the defendant are dismissed; or

(B) if the defendant is acquitted.

If the court grants a request to prohibit public Internet access to an electronic court record in a criminal case, the search result for the record must display the words "Internet Access Prohibited under N.D.Sup.Ct. Admin.R 41."

(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 to the court by any member of the public or on the court's own motion on notice as provided in Section 6(c).

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

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

EXPLANATORY NOTE

Adopted on an emergency basis effective October 1, 1996; Amended and adopted effective November 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; March 15, 2009; March 1, 2010; March 1, 2012; March 1, 2015; March 1, 2016; October 1, 2016; March 1, 2017; May 1, 2017; August 1, 2017;_____.

Appendix amended effective August 1, 2001, to reflect the name change of State Bar Board to State Board of Law Examiners. Appendix amended effective August 1, 2017, to add a reference to N.D.C.C. § 14-05-24.3 and to remove a reference to § 50-06-05.1.

Section 2(c) was amended, effective March 1, 2017, to clarify that the public may have access to information in a court record except when access is excluded under Section 5.

Section 3(a)(1) was amended, effective October 1, 2016, to reference N.D.R. Sup. Ct. Admin. R. 40, which governs access to recordings of trial court proceedings.

Section 3(b)(3) was added, effective March 1, 2016, to clarify that the clerk of court is not required to search within a court record for specific information that may be sought by a requestor.

Section 3(c) was adopted, effective March 1, 2010, to state that protected information may be contained in court records filed before the adoption of N.D.R.Ct. 3.4.

Section 4(a) was amended, effective March 1, 2017, to specify that a terminal will be available at each county courthouse for public access to court records stored in the Odyssey system.

295 Section 4(b) was amended, effective March 1, 2017, to allow the Supreme Court to
296 enact and implement policies to regulate remote access to court records and to limit
297 remote access by name search to pre-conviction records in criminal cases. An additional
298 amendment allows attorneys to apply for remote access to public court records stored in
299 the Odyssey system.

300 Section 4(c) was amended, effective March 15, 2009, to allow parties who enter
301 into bulk distribution agreements with the courts to have access to birth date, street
302 address, and social security number information upon certifying compliance with laws
303 governing the security of protected information. Such laws include the Federal Fair Credit
304 Reporting Act, the Gramm Leach Bliley Act, the USA Patriot Act and the Driver's
305 Privacy Protection Act.

306 Section 5(b)(6) was amended, effective March 1, 2015, to clarify that the
307 restriction on public access to documents in domestic violence protection order and
308 disorderly conduct restraining order cases under this paragraph is limited to cases that
309 were dismissed summarily.

310 Section 5(b)(8) was adopted, effective _____, to exclude addresses of jurors
311 from public access;

312 Section 5(b)(~~9~~)(10) was amended, effective March 1, 2017, to exclude pretrial
313 diversion cases resulting in dismissal from public access.

314 Section 5(b)(~~10~~)(11) was added, effective March 1, 2017, to exclude cases in
315 which a magistrate finds no probable cause for the issuance of a complaint from public

access.

Section 5(b)(~~H~~)(12) was amended, effective March 15, 2009, to list types of protected information open to the public.

The term "financial-account number" in Section 5(b)(~~H~~)(12) includes any credit, debit or electronic fund transfer card number, and any other financial account number.

Section 5(b)(~~H~~)(12) was amended, effective March 1, 2010, to incorporate the exemptions from redaction contained in N.D.R.Ct. 3.4(b). A document containing protected information that is exempt from redaction under N.D.R.Ct. 3.4(b) is accessible to the public.

Section 5(b)(~~13~~)(14) was added, effective March 1, 2016, to exclude party, witness and crime victim contact information gathered and recorded by the court for administrative purposes from public access.

Section 5(b)(~~14~~)(15) was added, effective March 1, 2017, to exclude information about patrons of the North Dakota Legal Self Help Center from public access.

Section 5(b)(~~15~~)(16) was added, effective August 1, 2017, to state that the property and debt listing of the parties to a divorce is confidential under N.D.C.C. § 14-05-24.3.

Section 6(a)(6) was added, effective May 1, 2017, to require, upon request of the victim, redaction of all victim contact information in a criminal court record. This right is granted by N.D. Const. Art. I, § 25(1)(e). "Victim" is defined in N.D. Const. Art. I, § 25(4).

337 Section 6(a)(7) was added, effective March 1, 2012, to provide a method for the
338 court to prohibit public Internet access to an electronic case record when charges against a
339 defendant are dismissed or the defendant is acquitted. A request under Section 6(a)(1) is
340 required before the court can act to prohibit access under Section 6(a)(6).

341 Nothing in this rule or N.D.R.Ct. 3.4 precludes a clerk of court or the electronic
342 case management system from identifying non-confidential records that match a name
343 and date of birth or a name and social security number.

344 HISTORY: Court Services Administration Committee Minutes of January 26-27,
345 2017, page 17; August 14, 2015; August 28, 2015, September 23, 2015; Joint Procedure
346 Committee Minutes of September 28, 2018, pages 18-19; April 27, 2017, pages 7-11;
347 September 29-30, 2016, pages 6-9, 28-29; May 12-13, 2016, pages 22-25; January 28-29,
348 2016, pages 2-7; September 24-25, 2015, pages 15-16, 20-21; April 23-24, 2015, pages
349 8-10; April 24-25, 2014, page 27; April 28-29, 2011, pages 9-12; September 23-24, 2010,
350 pages 16-20; September 24-25, 2009, pages 8-9; May 21-22, 2009, pages 28-44; January
351 29-30, 2009, pages 3-4; September 25, 2008, pages 2-6; January 24, 2008, pages 9-12;
352 October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005,
353 pages 6-16; April 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January
354 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003, pages
355 6-12. Court Technology Committee Minutes of June 18, 2004; March 19, 2004;
356 September 12, 2003; Conference of Chief Justices/Conference of State Court
357 Administrators: Guidelines for Public Access to Court Records.

358 STATUTES AFFECTED:

359 CONSIDERED: N.D. Const. Art. I, § 25

360 CROSS REFERENCE: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made With
the Court).