IN THE SUPREME COURT
STATE OF NORTH DAKOTA

NOTICE OF COMMENT

Supreme Court No. 20200229

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

[¶1] On August 27, 2020, the Joint Procedure Committee filed a Petition with the Supreme proposing amendments to North Dakota Rules of Civil Procedure 4, 5, 10, 43, 53, 54, 55, 56, 59, 62, and 65; North Dakota Rules of Criminal Procedure 4.1, 9, 32.1, 32.2, 33, 44, 46, and 47; North Dakota Rules of Evidence 509 and 606, North Dakota Rules of Appellate Procedure 5, 8, 9, 21, 25, 27, 34, 35; North Dakota Rules of Court 3.2, 3.4, 3.5, 5.2, 6.1, 7.1, 8.2, 8.3.1, 8.4, 8.5, 11.2, and 11.4, North Dakota Supreme Court Administrative Rules 52 and 57; and North Dakota Rules of Juvenile Procedure 5, 14, 16, and 19. The proposal is available at https://www.ndcourts.gov/supreme-court/dockets/20200229. 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] **IT IS ORDERED**, any person wishing to comment on the proposals may do so by email to Petra H. Mandigo Hulm, 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 **Friday, November 6, 2020.**

[¶3] The Supreme Court of the State of North Dakota convened this 7th day of October, 2020, with, the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

/s/ Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

20200229
FILED AUGUST 27, 2020
CLERK OF THE SUPREME COURT
STATE OF NORTH DAKOTA

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 4 - Persons Subject to Jurisdiction; Process; Service
Rule 5 - Service and Filing of Pleadings and Other Papers
Rule 10 - Form of Pleadings
Rule 43 - Evidence
Rule 53 - Masters
Rule 54 - Judgment; Costs
Rule 55 - Default; Default Judgment
Rule 56 - Summary Judgments
Rule 59 - New Trial; Amending a Judgment
Rule 62 - Stay of Proceedings to Enforce a Judgment
Rule 65 - Injunctions

North Dakota Rules of Criminal Procedure

Rule 4.1 - Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means
Rule 9 - Warrant or Summons upon Indictment or Information
Rule 32.1 - Deferred Imposition of Sentence
Rule 32.2 - Pretrial Diversion
Rule 33 - New Trial
Rule 44 - Right to and Appointment of Counsel
Rule 46 - Release from Custody
Rule 47 - Motions

North Dakota Rules of Evidence

Rule 509 - Identity of Informer
Rule 606 - Juror's Competency as a Witness

North Dakota Rules of Appellate Procedure

Rule 5 - Post-Judgment Mediation
Rule 8 - Stay or Injunction Pending Appeal
Rule 9 - Release in Criminal Cases
Rule 21 - Writs
Rule 25 - Filing and Service
Rule 27 - Motions
Rule 34 - Oral Argument
Rule 35 - Scope of Review

North Dakota Rules of Court

Rule 3.2 - Motions
Rule 3.4 - Privacy Protection for Filings Made with the Court
Rule 3.5 - Electronic Filing in the District Courts
Rule 5.2 - Extraordinary Writs
Rule 6.1 - Continuances
Rule 7.1 - Judgments, Orders And Decrees
Rule 8.2 - Interim Orders in Domestic Relations Cases
Rule 8.3.1 - Case Management (Determination of Parental Rights or Change of Residential Responsibility)
Rule 8.4 - Summons in Action For Divorce, Separation or to Determine Parental Rights and Responsibilities
Rule 8.5 - Domestic Relations Summary Proceeding
Rule 11.2 - Withdrawal of Attorneys
Rule 11.4 - Bonds in Non-criminal Matters

North Dakota Supreme Court Administrative Rules

Rule 52 - Contemporaneous Transmission by Reliable Electronic Means
Rule 57 - Judicial Emergency

North Dakota Rules of Juvenile Procedure

Rule 5 - Summons
Rule 14 - Motions
Rule 16 - Modification and Vacation of Orders
Rule 19 - Juvenile Records

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

Dated August 27, 2020.

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. Jon W. Backes
Mr. Bradley J. Beehler
Mr. Birch P. Burdick
Mr. Sean T. Foss
Mr. Mark A. Friese
Prof. Margaret Moore Jackson
Mr. Zachary E. Pelham
Ms. DeAnn Pladson
Ms. Lisa M. Six
Mr. Lloyd C. Suhr

Justice Lisa K. Fair McEvers
Chair

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Proposed Amendments to the North Dakota:

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

Submitted by the
Joint Procedure Committee
August 2020

SYNOPSIS OF PROPOSED AMENDMENTS

A. North Dakota Rules of Civil Procedure

Rule 4 - Persons Subject to Jurisdiction; Process; Service

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 5 - Service and Filing of Pleadings and Other Papers

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 10 - Form of Pleadings

Amendment is proposed to clarify that the responsibility of adding the state to the title belongs to the first party filing a pleading after the state becomes a party in interest.

Rule 43 - Evidence

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 53 - Masters

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 54 - Judgment; Costs

Amendment is proposed to provide a procedure for objections to be heard before costs and disbursements are inserted in the judgment and to include content requirements for motions seeking attorney fees.

Rule 55 - Default; Default Judgment

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 56 - Summary Judgments

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 59 - New Trial; Amending a Judgment

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 62 - Stay of Proceedings to Enforce a Judgment

Amendment is proposed to increase the time of the automatic stay from 14 to 30 days and to expand the circumstances under which a stay by bond may be obtained.

Rule 65 - Injunctions

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

B. North Dakota Rules of Criminal Procedure

Rule 4.1 - Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 9 - Warrant or Summons upon Indictment or Information

Amendment is proposed to delete the term "affidavit" from the explanatory note and to replace it with "declaration."

Rule 32.1 - Deferred Imposition of Sentence

Amendment is proposed to clarify that a petition seeking revocation of probation or modification of an order deferring imposition of sentence must be filed no later than 60 days after expiration or termination.

Rule 32.2 - Pretrial Diversion

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 33 - New Trial

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 44 - Right to and Appointment of Counsel

Amendment is proposed to provide a procedure for the use of limited and joint representation for pretrial release proceedings.

Rule 46 - Release from Custody

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 47 - Motions

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

C. North Dakota Rules of Evidence

Rule 509 - Identity of Informer

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 606 - Juror's Competency as a Witness

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

D. North Dakota Rules of Appellate Procedure

Rule 5 - Post-Judgment Mediation

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 8 - Stay or Injunction Pending Appeal

Amendment is proposed to delete the term “affidavit” from the rule and to replace it with “declaration.”

Rule 9 - Release in Criminal Cases

Amendment is proposed to delete the term “affidavit” from the rule and to replace it with “declaration.”

Rule 21 - Writs

Amendment is proposed to make the rule applicable to all writs filed in the supreme court, to clarify that fees apply to filing, and to delete the term “affidavit”and to replace it with “declaration.”

Rule 25 - Filing and Service

Amendment is proposed to require that, in a criminal appeal in which a motion to dismiss the appeal is filed, service must be made on the individual criminal defendant and all counsel.

Rule 27 - Motions

Amendment is proposed to delete the term “affidavit” from the rule and to replace it with “declaration.”

Rule 34 - Oral Argument

Amendment is proposed to clarify that, if the court grants a request for oral argument, any party submitting a timely brief will be allowed to participate in oral argument.

Rule 35 - Scope of Review

Amendment is proposed to require a party seeking additional briefing or oral argument after a remand to district court to make a specific request to the court.

E. North Dakota Rules of Court

Rule 3.2 - Motions

Amendment is proposed to list details about the information required in the notice of motion, to clarify the procedure for requesting oral argument, and to provide a detailed procedure for requesting an evidentiary hearing.

Rule 3.4 - Privacy Protection for Filings Made with the Court

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 3.5 - Electronic Filing in the District Courts

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 5.2 - Extraordinary Writs

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 6.1 - Continuances

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 7.1 - Judgments, Orders and Decrees

Amendment is proposed to clarify that a party may file and serve a response to proposed findings of fact and conclusions of law and to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 8.2 - Interim Orders in Domestic Relations Cases

Amendment is proposed to provide a procedure for motions for temporary modification of residential responsibility and to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 8.3.1 - Case Management (Determination of Parental Rights or Change of Residential Responsibility)

Amendment is proposed to reference Rule 8.2(c) on motions for temporary modification of residential responsibility.

Rule 8.4 - Summons in Action for Divorce, Separation or to Determine Parental Rights and Responsibilities

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 8.5 - Domestic Relations Summary Proceeding

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 11.2 - Withdrawal of Attorneys

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 11.4 - Bonds in Non-criminal Matters

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

F. North Dakota Supreme Court Administrative Rules

Rule 52 - Contemporaneous Transmission by Reliable Electronic Means

Amendment is proposed to allow witness testimony by reliable electronic means in a criminal case when authorized by rule or law.

Rule 57 - Judicial Emergency

Amendment is proposed to allow a court in a judicial emergency to designate an alternative method of conducting court business.

G. North Dakota Rules of Juvenile Procedure

Rule 5 - Summons

Amendment is proposed to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 14 - Motions

Amendment is proposed to clarify the procedure for submitting a motion and requesting oral argument and to delete the term "affidavit" from the rule and to replace it with "declaration."

Rule 16 - Modification and Vacation of Orders

Amendment is proposed to clarify that the court must grant a request for oral argument on a motion.

Rule 19 - Juvenile Records

Amendment is proposed to allow the Chief Justice to authorize the release of information from juvenile records for research purposes.

RULE 4. PERSONS SUBJECT TO JURISDICTION; PROCESS; SERVICE

(a) Definition of Person. As used in this rule, "person", whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state, includes:

(1) an individual, executor, administrator or other personal representative;

(2) any other fiduciary;

(3) any two or more persons having a joint or common interest;

(4) a partnership;

(5) an association;

(6) a corporation; and

(7) any other legal or commercial entity.

(b) Personal Jurisdiction.

(1) Personal Jurisdiction Based on Presence or Enduring Relationship. A court of this state may exercise personal jurisdiction over a person found within, domiciled in, organized under the laws of, or maintaining a principal place of business in, this state as to any claim for relief.

(2) Personal Jurisdiction Based on Contacts. A court of this state may exercise personal jurisdiction over a person who acts directly or by an agent as to any claim for relief arising from the person's having such contact with this state that the exercise of personal jurisdiction over the person does not offend against traditional notions of justice or fair play or the due process of law, under one or more of the following circumstances:

(A) transacting any business in this state;

(B) contracting to supply or supplying service, goods, or other things in this state;

(C) committing a tort within or outside this state causing injury to another person or property within this state;

(D) committing a tort within this state, causing injury to another person or property within or outside this state;

(E) having an interest in, using, or possessing property in this state;

(F) contracting to insure another person, property, or other risk within this state;

(G) acting as a director, manager, trustee, or officer of a corporation organized under the laws of, or having its principal place of business within, this state;

(H) enjoying any other legal status or capacity within this state; or

(I) engaging in any other activity, including cohabitation or sexual intercourse, within this state.

(3) Limitation on Jurisdiction Based on Contacts. If jurisdiction over a person is based solely on paragraph (2) of this subdivision, only a claim for relief arising from bases enumerated in paragraph (2) may be asserted against that person.

(4) Acquisition of Jurisdiction. A court of this state may acquire personal jurisdiction over any person through service of process as provided in this rule or by statute, or by voluntary general appearance in an action by any person either personally or through an attorney or any other authorized person.

(5) Inconvenient Forum. If the court finds, in the interest of substantial justice, the action should be heard in another forum, the court may stay or dismiss the action in whole

or in part on any condition that may be just.

(c) Process.

(1) Contents of Summons. The summons must:

(A) specify the venue of the court in which the action is brought;

(B) contain the title of the action specifying the names of the parties;

(C) be directed to the defendant;

(D) It must state the time within which these rules require the defendant to appear and defend;

(E) notify the defendant that, if the defendant fails to appear and defend, default judgment will be rendered against the defendant for the relief demanded in the complaint; and

(F) be dated and subscribed by the plaintiff or the plaintiff's attorney and include the post office address of the plaintiff or plaintiff's attorney.

(G) If the action involves real estate and service is by publication, include the additional information required by Rule 4(e)(8).

(2) Copy of Complaint. A copy of the complaint must be served with the summons, except when service is by publication under Rule 4(e).

(d) Personal Service.

(1) By Whom. Service of all process may be made:

(A) within the state by any person of legal age and not a party to nor interested in the action; and

(B) outside the state by any person who may make service under the law of this

state or under the law of the place where service is made, or by a person who is designated by a court of this state.

(2) How Service Made Within the State. Personal service of process within the state must be made as follows:

(A) Serving an Individual Fourteen Years of Age and Older. Service must be made on an individual 14 or more years of age by:

(i) delivering a copy of the summons to the individual personally;

(ii) leaving a copy of the summons at the individual's dwelling or usual place of residence in the presence of a person of suitable age and discretion who resides there;

(iii) delivering, at the office of the process server, a copy of the summons to the individual's spouse if the spouses reside together;

(iv) delivering a copy of the summons to the individual's agent authorized by appointment or by law to receive service of process; or

(v) any form of mail or third-party commercial delivery addressed to the individual to be served and requiring a signed receipt and resulting in delivery to that individual.

(B) Serving an Individual Under the Age of Fourteen. Service must be made on an individual under the age of 14 by delivering a copy of the summons to:

(i) the individual's guardian, if the individual has one within the state;

(ii) the individual's parent or any person or agency having the individual's care or control, or with whom the individual resides, if the individual does not have a guardian within the state; or

(iii) the person designated by court order, if service cannot be made under (i) or

(ii).

(C) Serving an Incompetent Individual or Appointed Guardian. Service must be made on an individual who has been judicially adjudged incompetent or for whom a guardian of the individual's person or estate has been appointed in this state, by delivering a copy of the summons to the individual's guardian. If a general guardian and a guardian ad litem have been appointed, both must be served.

(D) Serving a Corporation, Partnership, or Association. Service must be made on a domestic or foreign corporation or on a partnership or other unincorporated association, by:

(i) delivering a copy of the summons to an officer, director, superintendent or managing or general agent, or partner, or associate, or to an agent authorized by appointment or by law to receive service of process on its behalf, or to one who acted as an agent for the defendant with respect to the matter on which the plaintiff's claim is based and who was an agent of the defendant at the time of service;

(ii) if the sheriff's return indicates no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons at any office of the domestic or foreign corporation, partnership, or unincorporated association within this state with the person in charge of the office; or

(iii) any form of mail or third-party commercial delivery addressed to any of the foregoing persons and requiring a signed receipt and resulting in delivery to that person.

(E) Serving a Municipal or Public Corporation. Service must be made on a city, township, school district, park district, county, or any other municipal or public

corporation, by delivering a copy of the summons to any member of its governing board.

(F) Serving the State and Its Agencies.

(i) State. Service must be made on the state by delivering a copy of the summons to the governor or attorney general or an assistant attorney general.

(ii) State Agency. Service must be made on an agency of the state, such as the Bank of North Dakota or the North Dakota Mill and Elevator Association, by delivering a copy of the summons to the managing head of the agency or to the attorney general or an assistant attorney general.

(G) Serving an Agent Not Authorized to Receive Process. If service is made on an agent who is not expressly authorized by appointment or by law to receive service of process on behalf of the defendant, a copy of the summons and complaint must be mailed or delivered via a third-party commercial carrier to the defendant with return receipt requested not later than ten days after service by depositing a copy of the summons and complaint, with postage or shipping prepaid, in a post office or with a commercial carrier in this state and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

(3) How Service of Process is Made Outside the State. Service on any person subject to the personal jurisdiction of the courts of this state may be made outside the state:

(A) in the same manner as service within this state, with the force and effect as though service had been made within this state;

(B) under the law of the place where service is made for service in that place in an

action in any of its courts of general jurisdiction; or

(C) as directed by court order.

(e) Service by Publication.

(1) When Service by Publication Permitted. A defendant, whether known or unknown, who has not been served personally under subdivision (d) of this rule may be served by publication in one or more of the following situations only if:

(A) the claim for relief is based on one or more grounds for the exercise of personal jurisdiction under paragraph (2) of subdivision (b) of this rule;

(B) the subject of the action is real or personal property in this state, and:

(i) the defendant has or claims a lien or other interest in the property, whether vested or contingent,

(ii) the relief demanded against the defendant consists wholly or partly in excluding the defendant from that lien or interest or in defining, regulating, or limiting that lien or interest, or

(iii) the action otherwise affects the title to the property;

(C) the action is to foreclose a mortgage, cancel a contract for sale, or to enforce a lien on or a security interest in real or personal property in this state;

(D) the plaintiff has acquired a lien on the defendant's property or credits within this state by attachment, garnishment, or other judicial processes and the property or credit is the subject matter of the litigation or the underlying claim for relief relates to the property or credits;

(E) the action is for divorce, separation, or annulment of a marriage of a state

resident;

(F) the action is to determine parenting rights and responsibilities of an individual subject to the court's jurisdiction; or

(G) the action is to award, partition, condemn, or escheat real or personal property in this state.

(2) Filing of Complaint and ~~Affidavit~~ Declaration for Service by Publication. Before service of the summons by publication is authorized, a complaint and ~~affidavit~~ declaration must be filed with the clerk of court where the action is venued. The complaint must set forth a claim in favor of the plaintiff and against the defendant and be based on one or more of the situations specified in paragraph (e)(1). The ~~affidavit~~ declaration must be executed by the plaintiff or the plaintiff's attorney and must state one or more of the following:

(A) that after diligent inquiry personal service of the summons cannot be made on the defendant in this state to the best knowledge, information, and belief of the ~~affiant~~ declarant;

(B) that the defendant is a domestic corporation that has forfeited its charter or right to do business in this state or has failed to file its annual report as required by law;

(C) that the defendant is a domestic or foreign corporation and has no officer, director, superintendent, managing agent, business agent, or other agent authorized by appointment or by law on whom service of process can be made on its behalf in this state; or

(D) that all persons having or claiming an estate or interest in, or lien or

encumbrance on, the real property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession, nor appearing of record in the office of the register of deeds, the clerk of the district court, or the county auditor of the county in which the real property is situated, to have such claim, title or interest in the property, are proceeded against as unknown persons defendant under N.D.C.C. Chs. 32-17 or 32-19, and stating facts necessary to satisfy the requirements of those chapters.

(3) Number of Publications. Service of the summons by publication may be made by publishing the summons three times, once each week for three successive weeks, in a newspaper published in the county where the action is pending. If no newspaper is published in that county, publication may be made in a newspaper having a general circulation in the county.

(4) Mailing or Delivering Summons and Complaint. A copy of the summons and complaint, at any time after the filing of the ~~affidavit~~ declaration for publication and no later than 14 days after the first publication of the summons, must be deposited in a post office or with a third-party commercial carrier in this state, postage or shipping prepaid, and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

(5) Personal Service Outside State is Equivalent to Publication. After the ~~affidavit~~ declaration for publication and the complaint in the action are filed, personal service of the summons and complaint on the defendant out of state is equivalent to and has the same force and effect as the publication and mailing or delivery provided for in

paragraphs (e)(3) and (4).

(6) Time When First Publication or Service Outside State Must Be Made. The first publication of the summons, or personal service of the summons and complaint on the defendant outside the state, must be made within 60 days after the filing of the ~~affidavit~~ declaration for publication. If not made, the action is considered discontinued as to any defendant not served within that time.

(7) When Defendant Served by Publication is Permitted to Defend.

(A) The defendant who is served by publication, or the defendant's representative, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action.

(B) Except in an action for divorce, the defendant who is served by publication, or the defendant's representative, on just terms, may be allowed to defend at any time within three years after entry of judgment if the defendant files ~~an affidavit~~ a declaration with the court that states:

(i) the defendant has a good and meritorious defense to the action; and

(ii) the defendant had no actual notice or knowledge of the action to enable the defendant to make application to defend before the entry of judgment.

(C) If the defense is successful and the judgment, or any part of the judgment, has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold under the judgment to a purchaser in good faith may not be affected.

(D) A defendant is considered to have had notice of the action and of the judgment if the defendant:

(i) receives a copy of the summons in the action by mail or delivery under paragraph (e)(4); or

(ii) is personally served the summons outside the state under paragraph (e)(5).

(8) Additional Information to be Published for Real Property. In all cases in which publication of summons is made in an action that the title to, or an interest in or lien on, real property is involved, the publication must also contain a description of the real property and a statement of the object of the action.

(f) Serving a Person in a Foreign Country. Unless otherwise provided by law, an individual, other than a minor or an incompetent person, may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law by

(i) delivering a copy of the summons and the complaint to the individual

personally; or

(ii) using any form of mail or third-party commercial delivery that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(4)Serving a Minor or Incompetent Person. Unless otherwise provided by law, service must be made on a minor or an incompetent person in a place not within any judicial district of the United States in the manner prescribed by paragraphs (2)(A), (2)(B), and (3).

(5) Serving a Foreign Corporation, Partnership, or Association. Unless otherwise provided by law, service must be made on a foreign corporation, partnership or other unincorporated association, that is subject to suit under a common name, in a place not within any judicial district of the United States in the manner prescribed for individuals in this subdivision except personal delivery under paragraph (2)(C)(i).

(g) When Service by Publication or Outside State Complete. Service by publication is complete fifteen days after the first publication of the summons. Personal service of the summons and complaint upon the defendant outside the state is complete fifteen days after the date of service.

(h) Amendment of Process or Proof of Service. The court may allow any process or proof of service to be amended at any time on notice and just terms, unless it clearly appears that the substantial rights of the party against whom the process was issued would be materially prejudiced.

(i) Proof of Service. Proof of service of the summons and of the complaint or

notice, if any, accompanying the summons or of other process, must be made as follows:

(1) if served by the sheriff or other officer, by the officer's certificate of service;

(2) if served by any other person, by the server's ~~affidavit~~ declaration of service;

(3) if served by publication, by ~~an affidavit~~ a declaration made as provided in N.D.C.C. § 31-04-06 and ~~an affidavit~~ a declaration of mailing or ~~an affidavit~~ a declaration of delivery via a third-party commercial carrier of a copy of the summons and complaint under paragraph (e)(4) of this rule, if the summons and complaint has been deposited;

(4) in any other case of service by mail or delivery via a third-party commercial carrier resulting in delivery under paragraph (d)(2) or (d)(3), by ~~an affidavit~~ a declaration of mailing or ~~an affidavit~~ a declaration of delivery of a copy of the summons and complaint or other process, with return receipt attached; or

(5) by the written admission of the defendant.

(j) Contents of Proof of Service.

(1) The certificate, ~~affidavit~~ declaration, or admission of service mentioned in subdivision (i) must state the date, time, place, and manner of service.

(2) If the process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the ~~affidavit~~ declaration of service must also state that:

(A) the server is of legal age and not a party to the action nor interested in the action, and

(B) the server knew the person served to be the person named in the papers served and the person intended to be served.

(k) Contents of ~~Affidavit~~ Declaration of Mailing or Delivery via a Third-Party Commercial Carrier. ~~An affidavit~~ A declaration of mailing or delivery required by this rule must:

(1) state a copy of the process, pleading, order of court, or other paper to be served was deposited by the ~~affiant~~ declarant, with postage or shipping prepaid, in the mail or with a third-party commercial carrier and directed to the party shown in the ~~affidavit~~ declaration to be served at the party's last reasonably ascertainable address;

(2) contain the date and place of deposit;

(3) indicate the ~~affiant~~ declarant is of legal age; and

(4) contain the return receipt, if any, attached to the ~~affidavit~~ declaration.

(l) Effect of Mail or Delivery Refusal. If a summons and complaint or other process is mailed or sent with delivery restricted and requiring a receipt signed by the addressee, the addressee's refusal to accept the mail or delivery constitutes delivery. Return of the mail or delivery bearing an official indication on the cover that delivery was refused by the addressee is prima facie evidence of the refusal. Service is complete on the date of refusal.

(m) Service Under Statute. If a statute requires service and does not specify a method of service, service must be made under this rule.

EXPLANATORY NOTE

Rule 4 was amended, effective 1971; January 1, 1976; January 1, 1977; January 1, 1979; September 1, 1983; March 1, 1986; March 1, 1990; March 1, 1996; March 1, 1998; March 1, 1999; March 1, 2004; March 1, 2007; August 1, 2009; March 1, 2011; March 1,

2013;_____. The explanatory note was amended, effective March 1, 2014.

Rule 4 governs civil jurisdiction and service of process. In contrast, Rule 5 applies to service of papers other than process.

Rule 4 was amended, effective March 1, 1999, to allow delivery via a third-party commercial carrier as an alternative to the Postal Service. The requirement for a "third-party" is consistent with the rule's requirement for personal service by a person not a party to nor interested in the action. The requirement for a "commercial carrier" means it must be the regular business of the carrier to make deliveries for profit. A law firm may not act as its own commercial carrier service for service of process. Finally, the phrase "commercial carrier" is not intended to include or authorize electronic delivery. Service via e-mail or facsimile transmission is not permitted by Rule 4.

Originally, Rule 4 concerned process, with no mention of jurisdiction. In 1971, what are now subdivisions (a) [Definition of Person] and (b) [Jurisdiction Over Person] were added. They were taken from the Uniform Interstate and International Procedure Act. Many changes were also made to subdivision (d) [previously (c)] concerning personal service, several of which were taken from that Act.

Subdivision (c) was amended, effective March 1, 1998, to provide a defendant with the means to compel the plaintiff to file the action.

Paragraph (c)(2) was amended, effective March 1, 2007, to require the complaint to be served with the summons under most circumstances.

Paragraph (c)(3) on making a demand to file the complaint was transferred to Rule 5, effective March 1, 2013.

Subdivision (d) was amended, effective March 1, 1998, to allow personal service by delivering a copy of the summons to an individual's spouse. The time of service for an item served by mail or third-party commercial carrier under subdivision (d) is the time the item is delivered to or refused by the recipient. Refusal of delivery is tantamount to receipt of the mail or delivery for purposes of service. On the other hand, if the mail or delivery is unclaimed, no service is made. Subdivision (l) was added in 1983, effective September 1, 1983, to make it clear that refusal of delivery by the addressee constitutes delivery.

Paragraph (d)(4) was deleted and subdivision (m) was added, effective March 1, 2004, to clarify that, when a statute requires service and no method of service is specified, service must be made under this rule. Statutes governing special procedures often conflict with these rules. As an example, N.D.C.C. 32-19-32 concerning the time period for mailing the summons and complaint after publication in a mortgage foreclosure conflicts with Rule 4(e)(4).

Paragraph (e)(4) was amended, effective March 1, 2011, to increase the time to deposit a copy of the summons and complaint with a post office or third-party commercial carrier from 10 to 14 days after the first publication of the summons.

A new subdivision (f) was added, effective March 1, 1996, to provide procedures for service upon a person in a foreign country. The new procedures follow Rule 26(f), Fed.R.Civ.P.

Rule 4 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.

Rule 4 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

Service of process under statutory methods is allowed in some circumstances. Examples of service statutes include: N.D.C.C. § 10-01.1-13 (service of process on foreign and dissolved business entities); N.D.C.C. § 26.1-11-10 (service on a foreign insurance company); N.D.C.C. § 28-04.1-02 (service on a person agreeing by contract to be sued in North Dakota); N.D.C.C. ch. 28-06.2 (service on the United States); N.D.C.C. § 39-01-11 (service on non-resident motorist); N.D.C.C. § 43-07-19 (service on non-resident contractors doing public work); N.D.C.C. § 52-04-12 (service on non-resident employers in unemployment compensation actions); N.D.C.C. § 53-05-04 (service of process in actions related to amusements).

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; September 26, 2019, pages 22-23; January 31-February 1, 2013, page 12; September 27, 2012, pages 7-8; January 26-27, 2012, pages 12-13; April 29-30, 2010, pages 5-6; May 21-22, 2009, pages 44-45; April 27-28, 2006, pages 11-14; January 30-31, 2003, pages 6-10; September 26-27, 2002, pages 15-18; April 30-May 1, 1998, pages 3, 8, and 11; January 29-30, 1998, pages 17-18; September 25-26, 1997, page 2; January 30, 1997,

pages 6-7, 10-12; September 26-27, 1996, pages 14-16; January 26-27, 1995, pages 7-8; April 20, 1989, page 2; December 3, 1987, pages 1-4 and 11; May 21-22, 1987, page 5; November 29, 1984, pages 3-5; September 30-October 1, 1982, pages 15-18; April 15-16, 1982, pages 2-5; December 11-12, 1980, page 2, October 30-31, 1980, page 31; January 17-18, 1980, pages 1-3; November 29-30, 1979, page 2:October 27-28, 1977, page 10; April 8-9, 1976, pages 5-9; Fed.R.Civ.P. 4.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. chs. 28-06, 28-06.1.

CONSIDERED: N.D.C.C. ~~ch.~~ chs. 28-06.2, 31-15; N.D.C.C. §§ 10-01.1-13; 26.1-11-10; 28-04.1-02; 39-01-11; 43-07-19; 52-04-12; 53-05-04.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions); N.D.R.Civ.P. 12 (Defenses and objections - When and how presented - By pleading or motion - Motion for judgment on pleadings); N.D.R.Civ.P. 45 (Subpoena), and N.D.R.Civ.P. 81 (Applicability In General); N.D.R.Ct. 8.4 (Summons in Action for Divorce or Separation).

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

(a) Service-When Required.

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

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

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

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

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

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

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

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

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

(4) Reopening Proceedings. In any proceeding to modify an order for spousal support or child support or an order on parental rights and responsibilities, service may be made on each party under Rule 5(b), unless the court orders service on a party under Rule 4.

(b) Service—How made.

(1) Service in general. A document that is required to be filed must be served electronically under the procedure specified in N.D.R.Ct. 3.5. Electronic service on an attorney must be made to the designated e-mail service address posted on the N.D. Supreme Court website. Electronic service is complete on transmission. Except as provided in N.D.R.Ct. 3.5(e)(4), electronic service is not effective if the serving party learns through any means that the document did not reach the person to be served.

(2) Persons Served.

(A) Service on a Party Represented by an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party. If an attorney is providing limited representation under Rule 11(e), service must be made on the party and on the attorney for matters within the scope of the limited representation.

(B) Persons Exempt from Electronic Service. Persons who are exempt from electronic service and filing under N.D.R.Ct. 3.5must serve documents under Rule 5(b)(3).

(3) Other Service. A document that is not required to be filed, or that will be served on a person exempt from electronic service, is served under this rule by:

(A) handing it to the person;

(B) leaving it:

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

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

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

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

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

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

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

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) In General. Unless a statute, court rule, or court order provides otherwise, all documents in an action must be filed with the clerk electronically, through the Odyssey system.

(2) Initiating Pleading.

(A) The Summons and Complaint.

(i) The summons and complaint, or other initiating pleading, must be filed before a subpoena may be issued. Unless otherwise authorized by rule or statute, a party seeking to file an initiating pleading must provide proof that the pleading was served under Rule 4. The proof of service must be filed with the initiating pleading.

(ii) A party who files a complaint or other initiating pleading must serve notice of filing on the other parties.

(iii) The defendant may demand that the plaintiff file the complaint.

- Service of the demand must be made under Rule 5(b) on the plaintiff's attorney or under Rule 4(d) on the plaintiff if the plaintiff is not represented by an attorney.

- In cases with multiple defendants, service of a demand by one defendant is

effective for all the defendants.

- If the plaintiff does not file the complaint within 20 days after service of the demand, service of the summons is void.

- The demand must contain notice that if the complaint is not filed within 20 days, service of the summons will be void, unless, after motion made within 60 days after service of the demand for filing, the court finds excusable neglect.

(iv) The defendant may file the summons and complaint, and the costs incurred on behalf of the plaintiff may be taxed as provided in Rule 54(e).

(B) The Answer. Within a reasonable time after service of the notice of filing the complaint or initiating pleading, the defendant or respondent must file the answer and notify the plaintiff of the filing.

(3) Discovery Materials. A party must not file discovery materials with the clerk unless:

(A) the materials are being submitted to the court for disposition of a pending motion;

(B) the court orders them to be filed; or

(C) a party certifies that the filing is necessary for safekeeping of the documents or exhibits pending case completion, in which event the party must state the reasons safekeeping is necessary.

(4) Return of Discovery Materials.

(A) The clerk shall return the following documents to the filing party upon final disposition of an appeal or, if no appeal is filed, upon expiration of the time for appeal:

(i) depositions;

(ii) interrogatories;

(iii) requests for admission;

(iv) requests for interrogatories;

(v) requests for production of documents; and

(vi) answers and responses to the above documents.

(B) If the filing party does not claim a filed document within 60 days after notification to do so, the clerk may dispose of the document as directed by court order.

(C) The clerk must take a receipt for all documents returned.

(5) Documents to be Used on Hearing. Unless otherwise directed by the court, all ~~affidavits~~ declarations, notices and other documents designed to be used on the hearing of a motion or order to show cause must be filed at least 24 hours before the hearing.

(6) Failure to Comply. If a party fails to comply with this subdivision, the court, on motion of any party or its own motion, may order the documents to be filed. If the order is not obeyed, the court may order them to be regarded as stricken and their service to be ineffective.

(7) Rejection. Except as otherwise provided under Rules 13, 14, or 15, the clerk must reject for filing any document that adds a party to an action or proceeding without a court order. The clerk must endorse on the document a notation that it is rejected for filing under this rule and return the document to the person who tendered it for filing.

(e) Removal of Pleadings for Service. Upon a filing party's request, an original pleading or document in any civil action, which by law is required to be filed in the clerk

of court's office where the action is pending, may be removed from the files for the purpose of serving it either inside or outside the state but must be returned without delay.

(f) Proof of Service. Proof of service under this rule is made as provided in Rule 4 or by an attorney's or court personnel's certificate showing that service was made under subdivision (b).

EXPLANATORY NOTE

Rule 5 was amended effective 1971, July 1, 1981; March 1, 1986; January 1, 1988; March 1, 1990; March 1, 1992, on an emergency basis; March 1, 1994; January 1, 1995; March 1, 1998; March 1, 1999; March 1, 2003; March 1, 2008; March 1, 2009; March 1, 2011; March 1, 2013; April 1, 2013; March 1, 2014; March 1, 2016;_____.

Rule 5 applies to service of documents other than "process." In contrast, Rule 4 governs civil jurisdiction and service of process. When a statute or rule requiring service does not pertain to service of process, nor require personal service under Rule 4, nor specify how service is to be made, service may be made as provided in Rule 5(b). An example of a rule that requires a particular type of service is N.D.R.Ct. 11.2, which specifies that attorneys seeking to withdraw from representation must give notice to their client "by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery."

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

Paragraph (a)(4) was added, effective March 1, 2016, to specify service methods in

proceedings to modify spousal support, child support or parental rights and responsibilities orders.

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

Paragraph (b)(1) was amended, effective March 1, 2014, to require any electronic service on an attorney to be made to the attorney's designated e-mail address as posted on the North Dakota Supreme Court website.

Paragraph (b)(2) was amended, effective April 1, 2013, to specify that electronic service through the Odyssey? system under the procedure specified in N.D.R.Ct. 3.5 is required for most documents that will be filed with the court.

Paragraph (b)(3) was amended, effective March 1, 2009, to provide for service by electronic means and to improve organization. Parties seeking to serve documents by electronic means must consult N.D.R.Ct. 3.5 for electronic service instructions.

Paragraph (b)(3) was amended, effective April 1, 2013, to specify that the other means of service listed in the paragraph apply only when the document served is not required to be filed or when it will be served on a person exempt from electronic service.

Subdivision (b) was amended, effective March 1, 1999, to permit service via a third-party commercial carrier as an alternative to the Postal Service. The requirement for

a "third-party commercial carrier" means the carrier may not be a party to nor interested in the action, and it must be the regular business of the carrier to make deliveries for profit. A law firm may not act as or provide its own commercial carrier service with service complete upon deposit. In addition, the phrase "commercial carrier" does not include electronic delivery services.

Paragraph (d)(1) was amended, March 1, 2008, to delete a reference to the note of issue and certificate of readiness.

Paragraph (d)(1) was amended, effective April 1, 2013, to specify that filing must be accomplished electronically through the Odyssey system unless a statute, rule or order provides otherwise.

Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to require that proof of service be provided and filed by a party seeking to file an initiating pleading. Under Rule 3, an action is commenced on service of the initiating pleading, not on filing. Unless a rule specifically provides otherwise, service under Rule 4 must be accomplished before any pleadings in an action may be filed.

Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to include language allowing the defendant to demand filing of the complaint or to file the complaint itself. This language was transferred from Rule 4.

Subparagraph (d)(2)(A) was amended, effective April 1, 2013, to clarify that any party who files a complaint or other initiating pleading must serve notice on the other parties in the matter. Service of the summons must be made under Rule 4.

Subdivision (f) was amended, effective March 1, 2003, to permit proof of service

to be made by court personnel as well as by an attorney. Proof of service may also be made in the same manner as provided by Rule 4(i).

Rule 5 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.

Rule 5 was amended, effective April 1, 2013, to replace the term "paper" with "document" throughout the rule.

Rule 5 was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; April 23-24, 2015, pages 10-13;September 26, 2013, pages 28-29; April 25-26, 2013, pages 15-16; January 31-February 1, 2013, pages 2-5, 15-18; January 26-27, 2012, pages 13-16; September 24-25, 2009, pages 12-13; April 24-25, 2008, pages 18-21; January 24, 2008, pages 2-7; October 11-12, 2007, pages 20-27; April 26-27, 2007, pages 19-22; September 27-28, 2001, pages 11-12; April 30-May 1, 1998, page 3; January 29-30, 1998, page 18; September 26-27, 1996, pages 16-17, 20; September 23-24, 1993, pages 19-20; April 29-30, 1993, pages 20-21; November 7-8, 1991, page 3; October 25-26, 1990, pages 10-12; April 20, 1989, page 2; December 3, 1987, page 11; May 21-22, 1987,

pages 17-18; February 19-20, 1987, page 4; September 18-19, 1986, page 8; November 30, 1984, pages 26-27; October 18, 1984, pages 8-11; November 29-30, 1979, page 2; September 20-21, 1979, pages 4-5; Fed.R.Civ.P. 5.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction-Process-Service), N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions), N.D.R.Civ.P. 45 (Subpoena), N.D.R.Civ.P. 77 (District Courts and Clerks),N.D.R.Crim.P. 49(Service and Filing of Papers), N.D.R.Ct. 3.1 (Pleadings), N.D.R.Ct. 3.5 (Electronic Filing in the District Courts); N.D.R.Ct. 6.4(Exhibits), N.D.R.Ct. 7.1 (Judgments, Orders and Decrees); N.D.R.Ct. 11.2 (Withdrawal of Attorneys).

RULE 10. FORM OF PLEADINGS

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name and the county in which the action is brought, a title that names the parties, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings may name the first party on each side and refer generally to other parties. If the State of North Dakota is a real party in interest in an action and was not named as a party in the original title, ~~its name must be added to~~ a party filing a pleading in the action must name the State in the title until the State files a notice in the action that it is no longer a real party in interest.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A document filed in conjunction with a pleading is a part of the pleading for all purposes.

EXPLANATORY NOTE

Rule 10 was amended, effective July 1, 1980; March 1, 2007; March 1, 2011; March 1, 2018;_____.

Rule 10 is adapted from Fed.R.Civ.P. 10.

Rule 10 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.

Subdivision (a) was amended, effective March 1, 2007, to specify that, if the State of North Dakota is a real party in interest to an action, or if it becomes a real party in interest, it must be named as a party in the title, regardless of whether it was named as a party originally. In some cases, the state may become a real party in interest by action of law. See, e.g., N.D.C.C. § 14-09-09.26.

Subdivision (a) was amended, effective_____, to clarify that the responsibility of adding the State to the title belongs to the first party filing a pleading after the State becomes a party in interest.

Subdivision (c) was amended, effective March 1, 2018, to allow a document filed in conjunction with a pleading to become part of the pleading.

SOURCES: Joint Procedure Committee Minutes of September 26, 2019, pages 2-6; September 28, 2017, page 12; November 29-30, 1979, page 4; September 20-21, 1979, pages 7 and 19; Fed.R.Civ.P. 10.

STATUTES AFFECTED:

Considered: N.D.C.C. § 14-09-09.26

CROSS REFERENCE: N.D.R.Civ.P. 7 (Pleadings Allowed-Form of Motions), N.D.R.Civ.P. 8 (General Rules of Pleading), and N.D.R.Civ.P. 25 (Substitution of Parties); N.D.R.Ct. 3.1 (Pleadings).

RULE 43. EVIDENCE

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a statute, the Rules of Evidence, these rules, or other court rules provide otherwise. For good cause, or on agreement of the parties, and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location. A party must give notice if a witness is unable to testify orally or if testimony by contemporaneous transmission may be necessary.

(b) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on ~~affidavits~~ declarations or may hear it wholly or partly on oral testimony or on depositions.

(c) Interpreter. If a person with limited English proficiency or a deaf person is involved in a proceeding as a party, witness, person with legal decision-making authority, or person with a significant legal interest in the matter, the court must provide an interpreter.

EXPLANATORY NOTE

Rule 43 was amended, effective 1976; January 1, 1980; March 1, 1999; March 1, 2011; March 1, 2014;_____. The explanatory note was amended August 1, 2015.

Subdivision (a) was amended, effective March 1, 1999, to follow the 1996 federal amendment. See 1996 Advisory Committee Note, Fed.R.Civ.P. 43. The requirement for testimony to be taken orally is deleted.

Former subdivision (b) on scope of examination and cross-examination was deleted, effective March 1, 2011. These topics are covered in the Rules of Evidence. The federal rule contains a subdivision entitled "Affirmation Instead of an Oath." Affirmations and oaths are governed by N.D.R.Ct. 6.10 (Courtroom Oaths).

Subdivision (c) on interpreters was added, effective March 1, 2014. It is intended to reflect the American Bar Association Standards for Language Access in Courts. N.D.Sup.Ct.Admin.R. 50 (Court Interpreter Qualifications and Procedures) provides guidance on interpreter qualifications and requirements and detailed information on payment for interpreter services. Under Admin. Rule 50, a party in a civil case may be required to reimburse the court for interpreter costs based upon ability to pay.

Rule 43 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.

Rule 43 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; January 29-30 2015, pages 8-10; September 25-26, 2014, pages 20-24; April 25-26, 2013, pages 16-18; January 31-February 1, 2013, pages 12-15; January 29-30, 2009, pages

34-35; January 29-30, 1998, pages 11-13; September 25-26, 1997, pages 10-11; November 29-30, 1979, page 16; April 26-27, 1979, pages 17-18; September 23-24, 1976, page 79; June 3-4, 1976, pages 16-18; Fed.R.Civ.P. 43.

STATUTES AFFECTED:

Superseded: N.D.C.C. § 31-01-12.

CONSIDERED: N.D.C.C. ~~ch.~~ chs. 28-33, 31-15; § 31-01-11.

CROSS REFERENCE: N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions); N.D.R.Ev. 101 (Scope), N.D.R.Ev. 103 (Rules on Evidence), N.D.R.Ev. 104 (Preliminary Questions), N.D.R.Ev. 603 (Oath or Affirmation), N.D.R.Ev. 604 (Interpreters), N.D.R.Ev. 607 (Who May Impeach), and N.D.R.Ev. 611 (Mode and Order of Interrogation and Presentation)); N.D.R.Ct. 6.10 (Courtroom Oaths); N.D.Sup.Ct.Admin.R. 50 (Court Interpreter Qualifications and Procedures).

RULE 53. MASTERS

(a) Appointment.

(1) Scope. Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition, or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) Disqualification. A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under N.D. Code Jud. Conduct Canon 3(E) unless the parties, with the court's approval, consent to appointment after the master discloses any potential grounds for disqualification.

(A) Any party may object to the appointment of any person as master for the same cause that a challenge for cause may be taken of a juror in the trial of a civil action.

(B) Any objections to the appointment of any person as master must be heard and disposed of by the court. ~~Affidavits~~ Declarations may be read and witnesses examined as to those objections.

(3) Possible Expense or Delay. In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing Master.

(1) Notice. Before appointing a master, the court must give the parties notice and an opportunity to be heard. A party may suggest candidates for appointment.

(2) Contents. The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) Issuing. The court may issue the order only after:

(A) the master files ~~an affidavit~~ a declaration disclosing whether there is any ground for disqualification under N.D. Code Jud. Conduct Canon 3(E); and

(B) if a ground is disclosed, the parties, with the court's approval, waive the

disqualification.

Before proceeding to hear any testimony, a master must be sworn to fairly hear and determine the facts referred and to make true findings according to the evidence.

(4) Amending. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(5) Masters in Eminent Domain Actions. In an eminent domain action in which the condemnor and the owner of the property sought to be taken for public use waive the right to have a jury determine just compensation or damages, the court, upon request of a party, may appoint one or three masters to determine the issue of just compensation or damages. If three masters are appointed a majority of them must determine their action and report. Trial of all issues other than compensation or damages must be by the court.

(c) Master's Authority.

(1) In General. Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) unless the appointing court orders otherwise, if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) Sanctions. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Master's Orders. A master who issues an order must file it and promptly serve a

copy on each party. The clerk must enter the order on the docket.

(e) Master's Reports. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

(f) Action on Master's Order, Report, or Recommendations.

(1) Opportunity for Hearing; Action in General. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) Time To Object or Move to Adopt or Modify. A party may file objections to, or a motion to adopt or modify, the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court determines otherwise.

(3) Reviewing Factual Findings. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's consent, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) Reviewing Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Reviewing Procedural Matters. Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) Fixing Compensation. Before or after judgment, the court must fix a master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) Payment. The compensation fixed must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Allocating Payment. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

EXPLANATORY NOTE

Rule 53 was amended effective September 1, 1983; March 1, 1990; March 1, 1994; and March 1, 2005; March 1, 2011;_____.

Rule 53 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.

Rule 53 was amended, effective March 1, 2005, based upon the December 1, 2003, amendment of Fed.R.Civ.P. 53.

Paragraph (f)(2) was amended, effective March 1, 2011, to increase the time to file

objections to a master's order from 20 to 21 days.

Rule 53 is derived from Fed.R.Civ.P. 53, except for several modifications based on statutory provisions the rule superseded. Subparagraphs (a)(2)(A) and (a)(2)(B) of the rule provide for objections to the appointment of a given person as master. Paragraph (b)(3) requires the master to be sworn.

Paragraph (b)(5) is derived from Fed.R.Civ.P. 71A (h) and provides an additional option of having a master or masters ascertain just compensation or determine the damages in eminent domain actions in which the parties have waived the right to a jury.

Rule 53 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; April 29-30, 2010, page 14; September 24-25, 2009, page 22; January 29-30, 2004, pages 18-20; January 28-29, 1993, page 8; April 20, 1989, page 2; December 3, 1987, page 11; November 18-19, 1982, pages 1-5; November 29-30, 1979, page 14; Fed.R.Civ.P. 53.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15, §§ 28-14-06, 32-15-01, 32-15-13, 32-15-22.

CROSS REFERENCE: N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions); N.D.R.Civ.P. 37 (Failure to Make Discovery-Sanctions); N.D.R.Civ.P. 45 (Subpoena); N.D.R.Ev. 103

133 (Rulings on Evidence); N.D.C.C. § 28-14-06 (Challenges for cause—Grounds).

RULE 54. JUDGMENT; COSTS

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

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

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

(d) Death Before Judgment. If a party dies after a verdict or decision on any issue of fact and before judgment, the court may still render judgment. That judgment is not a lien on the real property of the deceased party, but is payable as provided in N.D.C.C. ch. 30.1-19.

(e) Costs; Objections; Attorneys' Fees.

(1) Costs. Costs and disbursements must be allowed as provided by statute.

(A) A party awarded costs and disbursements must ~~submit~~ serve and file a detailed, verified statement ~~to the clerk~~ of costs and disbursements within 30 days after entry of an order for judgment. ~~Upon receipt of the statement, the clerk must allow those costs and disbursements and insert them in the judgment. A copy of the statement must accompany the notice of entry of judgment.~~

(~~2~~ B) ~~Objections to Costs.~~ Objections must be served and filed ~~with the clerk~~ within 14 days after ~~notice of entry of judgment~~ service of the statement or ~~within a longer time fixed by court order within the 14 days~~ such other time as the court, in its discretion, may allow. The grounds for objections must be specified.

(C) If objections are filed, the clerk must promptly submit them to the judge who ~~ordered the~~ issued the order for judgment. ~~The court by ex parte order must fix a time for hearing the objections. Unless otherwise directed by the court, the parties may waive the right to a hearing and submit written argument instead within a time specified by the court.~~ A party may request a hearing on objections to costs within seven days of filing of the objections and must secure a time for hearing and serve notice upon all parties. A timely request for hearing must be granted.

(D) If no objections are filed within the time designated under this rule, the clerk must allow the costs and disbursements included in the statement and insert them in the judgment. If the court determines costs and disbursements under this rule, the clerk must insert them in the judgment.

(~~3~~ 2) Attorneys' Fees. A claim for attorneys' fees and related nontaxable expenses not determined by the judgment must be made by motion.

(A) The motion must be served and filed within 21 days after notice of entry of judgment.

(B) The motion must:

(i) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(ii) state the amount sought or provide a fair estimate of it; and

(iii) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) The trial court may decide the motion even after an appeal is filed.

EXPLANATORY NOTE

Rule 54 was amended, effective January 1, 1980; September 1, 1983; March 1, 1990; March 1, 1997; March 1, 1998; March 1, 2011; March 1, 2012; _____.

Under subdivision (b), entry of a final judgment adjudicating fewer than all of the claims of all of the parties is permitted only in the infrequent harsh case involving unusual circumstances where failure to allow an immediate appeal would create demonstrated prejudice or hardship. The party requesting entry of judgment under subdivision (b) carries the burden of establishing that unusual and compelling or out-of-the-ordinary circumstances exist and that prejudice or hardship will result if entry of judgment is denied. The district court must weigh the overall policy prohibiting piecemeal appeals against the exigencies of the case and must delineate the unusual or

compelling circumstances justifying order of entry of judgment. If the district court does not enter judgment under Rule 54(b), a partial summary judgment adjudicating fewer than all of the claims of all of the parties is not a final judgment and is not immediately appealable. A party seeking to appeal must wait until the end of the case, when all claims have been resolved and final judgment has been entered, before filing an appeal.

Subdivision (e) was amended, effective _____, to provide a procedure for objections to be heard before costs and disbursements are inserted in the judgment and to include content requirements for motions seeking attorney fees.

Paragraph (e)(~~2~~ 1)(B) was amended, effective March 1, 2011, to increase the time to object to costs from 7 to 14 days after ~~notice of entry of judgment~~ service of the statement of costs and disbursements.

Paragraph (e)(~~3~~ 2) was amended, effective March 1, 2011, to increase the time to make a claim for attorneys' fees from 15 to 21 days after notice of entry of judgment.

Rule 54 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 26, 2019, pages 6-12; April 26, 2019, pages 5-7; April 28-29, 2011, page 13; April 29-30, 2010, page 14; September 24-25, 2009, page 23; January 30, 1997, page 8; January 25-26, 1996, pages 7-10; September 28-29, 1995, page 18; April 20, 1989, page 2; December 3, 1987, page 11; November 29, 1984, page 18; September 30-October 1, 1982, pages 1-3; November

29-30, 1979, page 14; April 26-27, 1979, pages 19-20; Fed.R.Civ.P. 54.

CROSS REFERENCE: ~~Rules~~ N.D.R.Civ.P. 8 (General Rules of Pleadings), N.D.R.Civ.P. 52 (Findings By the Court), N.D.R.Civ.P. 58 (Entry of Judgment), N.D.R.Civ.P. 59 (New Trials-Amendment of Judgments) and N.D.R.Civ.P. 77 (District Courts and Clerks)~~, N.D.R.Civ.P.~~; ~~Rule~~ N.D.R.App.P. 3 (Appeal as of Right-How Taken)~~, N.D.R.App.P.~~. See also, ~~Rules~~ N.D.R.Civ.P. 20 (Permissive Joinder of Parties) and N.D.R.Civ.P. 21 (Misjoinder and Non-Joinder of Parties)~~, N.D.R.Civ.P.~~.

RULE 55. DEFAULT; DEFAULT JUDGMENT

(a) Entry. If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise appear and the failure is shown by ~~affidavit~~ declaration or otherwise, the court may direct the clerk to enter an appropriate default judgment in favor of the plaintiff and against the defendant as follows:

(1) If the plaintiff's claim against a defendant is for a sum certain or a sum that can be made certain by computation, the court, on ~~affidavit~~ a declaration of the amount due and on production of the written instrument, if any, on which the claim is based, may direct the entry of judgment.

(2) In all other cases, the court, before directing the entry of judgment, must require the necessary proof to enable it to determine and grant any relief to the plaintiff. To this end, the court may:

(A) Hear evidence and assess damages;

(B) Direct a reference for an accounting or for taking testimony or for a determination of the facts; or

(C) Submit any issue of fact to a jury.

(3) A default judgment may be entered against a minor or incompetent person only if represented by a general guardian or other representative who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with a motion for judgment. Notice must be served with the motion and must comply with N.D.R.Ct. 3.2(a).

(4) When service of the summons has been made by published notice, or by delivery of a copy outside the state, default judgment must not be entered until the plaintiff, if required by the court, has filed a court-approved bond that conforms to a court order regarding the restitution of property obtained from the judgment if a defense is later permitted and sustained. A bond is not required in actions involving the title to real estate or to foreclose mortgages or other liens.

(b) Judgment Against the State. A default judgment may be entered against the state, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

EXPLANATORY NOTE

Rule 55 was amended, effective March 1, 1990; March 1, 2003; March 1, 2011;_____. The explanatory note was amended, effective March 1, 2017.

Rule 55 is derived from Fed.R.Civ.P. 55, with several changes.

The federal rule contains a two-step process: entry of default and then entry of judgment. The first step is not specifically required in this rule. Subdivision (a) is a combination of the first two subdivisions of the federal rule, but specifies that the clerk cannot enter a default judgment without being directed to do so by the court, unlike the federal rule where the clerk can enter judgment in certain cases without court direction. Paragraph (2) authorizes the court to require proof before directing the default judgment. Paragraph (4), derived partly from N.D.R.C. § 28-0906 (1943), authorizes the court to require a bond before judgment is entered when service of the summons has been made by publication or delivery out of the state, with certain exceptions.

Former subdivision (b) was deleted from the rule effective March 1, 2011. The subdivision included two provisions. The first recognized that Rule 55 applies to described claimants. The list was incomplete and unnecessary; Rule 55(a) applies Rule 55 to any party against whom a judgment for affirmative relief is requested. The second provision was a redundant reminder that Rule 54(c) limits the relief available by default judgment.

Subdivision (b) is identical to subdivision (d) of the federal rule, with the substitution of the state for United States.

The federal provision [subdivision (c)] for setting aside default was not adopted. See Rule 60(b) regarding relief from a judgment or order.

The operation of this rule is also directly affected by the Servicemember's Civil Relief Act, 50 U.S.C. §§ 3901, et seq. Section 3931 imposes specific requirements that must be fulfilled before a default judgment can be ordered or entered. If a default judgment is entered against a person in military service without compliance with the requirements of § 3931, the judgment may be vacated.

Rule 55 was amended, effective March 1, 1990. The amendments were technical in nature and no substantive change was intended.

Rule 55 was amended, effective March 1, 2003. Paragraph (a)(3) was changed to substitute the term "motion" for the term "application" and to require that a motion for a default judgment must comply with N.D.R.Ct. 3.2(a).

Rule 55 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.

Rule 55 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; January 28-29, 2016, page 22; September 24-25, 2009, page 23; September 27-28, 2001, pages 15-17; April 20, 1989, page 2; December 3, 1987, page 11; November 29-30, 1979, page 15; Fed.R.Civ.P. 55. 55.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 5(a) (Service—When Required), N.D.R.Civ.P. 6(d) (~~For~~ Motions~~—Affidavits~~), N.D.R.Civ.P. 7(b) (Motions and Other Papers), N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions), N.D.R.Civ.P. 37(Failure to Make Discovery Sanctions), N.D.R.Civ.P. 54 (Judgment Costs), and N.D.R.Civ.P. 60 (Relief from Judgment or Order).

RULE 56. SUMMARY JUDGMENT

(a) By a Claiming Party. A party claiming relief may move, with or without supporting ~~affidavits~~ declarations, for summary judgment on all or part of the claim. The motion may be filed at any time after:

(1) 21 days have passed from commencement of the action; or

(2) the opposing party serves a motion for summary judgment.

(b) By a Defending Party. A party against whom relief is sought may move at any time, with or without supporting ~~affidavits~~ declarations, for summary judgment on all or part of the claim.

(c) Serving the Motion; Proceedings.

(1) Time for Service. The motion and supporting documents must be filed at least 90 days before the day set for trial and 45 days before the day set for the hearing unless otherwise ordered. An opposing party has 30 days after service of a brief to serve and file an answer brief and supporting documents. The moving party has 14 days to serve and file a reply brief.

(2) Length of Brief.

(A) Page Limit. A principal brief or answer brief may not exceed 38 pages and a reply brief may not exceed 12 pages. Footnotes must be included in the page count.

(B) Typeface. The typeface must be 12 point or larger with no more than 16 characters per inch. The text must be double-spaced, except quotations may be single-spaced and indented.

(C) Request to Exceed Volume Limitations. Upon written application and good cause shown, the court may enlarge the page volume limits provided in this rule. The application may not exceed two pages and must be filed no later than seven days prior to the deadline for filing the brief.

(3) Judgment. The judgment sought shall be rendered if the pleadings, the discovery and disclosure materials on file, and any ~~affidavits~~ declarations, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case Not Fully Adjudicated on the Motion.

(1) Establishing Facts. If summary judgment is not rendered on the whole action, the court shall, to the extent practicable, determine what material facts are not genuinely at issue. The court shall so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It shall then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) Establishing Liability. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) ~~Affidavits~~ Declarations; Further Testimony.

(1) In General. A supporting or opposing ~~affidavit~~ declaration must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the ~~affiant~~ declarant is competent to testify on the matters stated. If a document or part of a

document is referred to in ~~an affidavit~~ a declaration, a sworn or certified copy must be attached to or served with the ~~affidavit~~ declaration. The court may permit ~~an affidavit~~ a declaration to be supplemented or opposed by depositions, answers to interrogatories, or additional ~~affidavits~~ declarations.

(2) Opposing Party's Obligation to Respond. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by ~~affidavits~~ declarations or as otherwise provided in this rule, set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment shall, if appropriate, be entered against that party.

(f) When ~~Affidavits~~ Declarations Are Unavailable. If a party opposing the motion shows by ~~affidavit~~ declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) deny the motion;

(2) order a continuance to enable ~~affidavits~~ declarations to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

(g) ~~Affidavit~~ Declaration Submitted in Bad Faith. If satisfied that ~~an affidavit~~ a declaration under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

EXPLANATORY NOTE

Rule 56 was amended, effective March 1, 1990; March 1, 1996; March 1, 1997; March 1, 2011; March 1, 2019;_____.

Paragraph (a)(1) was amended, effective March 1, 2011, to increase the time to move for summary judgment from 20 to 21 days after commencement of the action.

Subdivision (c) was amended, effective March 1, 2019, to establish a deadline for serving a motion, a deadline for a reply brief and length limits for principal, answer, and reply briefs.

Under subdivision (e) a party resisting a motion for summary judgment has the responsibility to draw the court's attention to the page and line of a deposition or other document containing the competent admissible evidence raising a material factual issue, or from which the trier of fact may draw an inference creating a material factual issue. First National Bank v. Clark, 332 N.W.2d 264 (N.D. 1983).

Rule 56 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.

Rule 56 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; April 27, 2018, pages 4-6; January 25, 2018, pages 4-6; September 28, 2017, pages 17-19; April 29-30, 2010, page 15; September 24-25, 2009, pages 23-24; April 25, 1996, pages 11-12; April 27-28, 1995, page 21; April 20, 1989, page 2; December 3, 1987, page 11; November 29, 1984, page 19; November 29-30, 1979, page 17; Fed.R.Civ.P. 56.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions).

RULE 59. NEW TRIAL; AMENDING A JUDGMENT

(a) New Trial-Defined. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court, or referee.

(b) Grounds for New Trial. The court may, on motion of an aggrieved party, vacate the former verdict or decision and grant a new trial on any of the following grounds materially affecting the substantial rights of the party:

(1) irregularity in the proceedings of the court, jury, or adverse party, or any court order or abuse of discretion that prevented a party from having a fair trial;

(2) jury misconduct, and if a juror has been induced to assent to any general or special verdict or to a finding on any question submitted to the jurors arrived at by chance, the misconduct may be proven by a juror's ~~affidavit~~ declaration;

(3) accident or surprise that ordinary prudence could not have guarded against;

(4) newly discovered evidence material to the moving party, which could not, with reasonable diligence, have been discovered and produced at the trial;

(5) excessive damages appearing to have been awarded under the influence of passion or prejudice, but when a new trial is requested on this ground and it appears that the passion or prejudice affected only the amount of damages awarded and did not influence the jury's findings on other issues in the case, the district court, on hearing the motion, and the supreme court, on appeal, may order a reduction of the verdict instead of a new trial or order that a new trial be had unless the prevailing party remits the excess damages;

(6) insufficient evidence to justify the verdict or other decision, or that the verdict is against the law;

(7) errors in law occurring at trial and, when required, objected to by the moving party; or

(8) if the aggrieved party, through no fault or negligence of that party, is unable to obtain a correct and complete transcript of the testimony and instructions given and proceedings had at trial.

(c) Time to File a Motion for a New Trial. A motion for a new trial must be served and filed no later than the following time after notice of entry of judgment:

(1) on the ground of newly discovered evidence, within six months; and

(2) on any other ground, within 60 days, unless the court, for good cause shown, extends the time.

(d) On What Motion for New Trial Made. A motion for a new trial may be made on the files, exhibits, and minutes of the court. Relevant facts not in the minutes may be shown by ~~affidavit~~ declaration. Either party may obtain a complete or partial transcript of the proceedings for use on the hearing of the motion.

(e) [RESERVED FOR FUTURE USE].

(f) Memorandum of Decision on Motion for New Trial. With all orders granting or denying a new trial, the court must file a written memorandum concisely stating the different grounds on which the ruling is based. Unless the insufficiency or unsatisfactory nature of the evidence is expressly stated in the memorandum as a reason for granting the new trial, it must be presumed, on appeal, that it was not on that ground.

(g) Jury Verdict Vacated by Court. The court in which the action is pending, on its own motion, may vacate the jury's verdict and grant a new trial if the jury has plainly disregarded the court's instructions or the evidence in the case is such that it convinces the court the verdict was rendered under a misapprehension of the instructions or under the influence of passion or prejudice.

(h) On Trial to the Court. In granting a new trial in an action tried without a jury, the court, without vacating the entered judgment, may limit the trial to one or more issues or take additional testimony on one or more issues and must confirm or amend the findings of fact and conclusions of law or make new findings and conclusions. If a judgment has been entered, the court may vacate it and enter a new judgment or may amend it to conform to the findings of fact and conclusions of law finally made by the court.

(i) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after notice of entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(j) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be served and filed no later than 28 days after notice of entry of the judgment.

EXPLANATORY NOTE

Rule 59 was amended, effective January 1, 1979; September 1, 1983; March 1,

1997; March 1, 1998; March 1, 2011;_____.

Subdivision (e) was repealed, effective March 1, 1997.

Subdivision (i) was amended, effective March 1, 2011, to increase the time for a court to order a new trial on its own from 15 to 28 days after notice of entry of judgment.

Subdivision (j) was amended, effective March 1, 2011, to increase the time to file a motion to alter or amend a judgment from 15 to 28 days after notice of entry of judgment.

Rule 59 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.

Rule 59 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; April 29-30, 2010, pages 15-16; January 28-29, 2010, pages 10-11; January 30, 1997, page 8; September 26-27, 1996, pages 10-12; April 25, 1996, pages 18-19; January 25-26, 1996, page 19; September 30-October 1, 1982, page 6, and pages 8-10; April 15-16, 1982, page 8; January 17-18, 1980, page 4;November 29-30, 1979, page 18; May 25-26, 1978, pages 29-31; January 12-13, 1978, pages 12-14; June 2-3, 1977, page 5.

Fed.R.Civ.P. 59; Minn. R. Civ. P. 59.02.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 28-18-06, 28-18-09, 28-27-27.

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions), N.D.R.Civ.P. 50 (Motion for a Directed Verdict), N.D.R.Civ.P. 52 (Findings by the Court), N.D.R.Civ.P. 60 (Relief from Judgment or Order), N.D.R.Civ.P. 61 (Harmless Error) and N.D.R.Civ.P. 62 (Stay of Proceedings to Enforce a Judgment); N.D.R.Ev. 606 (Competency of Juror as Witness).

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay~~; Exceptions for Injunctions, Receiverships, and Accountings~~. Except as ~~stated in this rule, no~~ provided in Rule 62(c) and (d), execution ~~may be issued~~ on a judgment~~, nor may~~ and proceedings ~~be taken~~ to enforce it~~, until 14 days have passed~~ are stayed for 30 days after notice of its entry ~~if the opposing party appeared, and 14 days have passed after entry of a default judgment. But~~ unless the court orders otherwise.~~, the following are not stayed after being entered, even if an appeal is taken:~~

~~(1) an interlocutory or final judgment in an action for an injunction or a receivership; or~~

~~(2) a judgment or order that directs an accounting.~~

~~(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment, or any proceedings to enforce it, pending disposition of any of the following motions:~~

~~(1) under Rule 50, for judgment as a matter of law;~~

~~(2) under Rule 52(b), to amend the findings or for additional findings;~~

~~(3) under Rule 59, for a new trial or to alter or amend a judgment; or~~

~~(4) under Rule 60, for relief from a judgment or order.~~

(b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) Stay of an Injunction or Receivership. Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

(1) an interlocutory or final judgment in an action for an injunction or receivership; or

(2) a judgment or order that directs an accounting.

~~(c)~~ (d) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or ~~denies~~ refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

~~(d) Stay With Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given on or after filing the notice of appeal. The stay takes effect when the court approves the bond.~~

(e) Stay Without Bond on an Appeal by the State, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the State, its officers, or its agencies or on an appeal directed by an agency or subdivision of the state government.

(f) Undertaking to Stay Execution for Delivery of Personal Property on Appeal. If the judgment directs the assignment or delivery of documents or personal property, its execution is not stayed on appeal unless:

(1) the matters required to be assigned or delivered are brought into court or are

placed in the custody of a court-appointed officer or receiver; or

(2) an undertaking is entered into on behalf of the appellant by at least two sureties, for a sum as directed by the court, providing that the appellant will obey the order of the appellate court on appeal.

(g) To Stay Execution of Conveyance or Instrument on Appeal. If the judgment directs the execution of a conveyance or other instrument, its execution is not stayed on appeal, unless the instrument has been executed and deposited with the clerk with whom the judgment was entered to abide the appellate court's judgment.

(h) Undertaking to Stay Execution for the Sale or Delivery of Real Property on Appeal. If the judgment directs the sale or delivery of possession of real property, its execution is not stayed on appeal unless an undertaking is executed on behalf of the appellant by at least two sureties, for a sum as directed by the court. The undertaking must provide that during the possession of the property, the appellant:

(1) will not commit or allow to be committed any waste on the property; and

(2) if the judgment is affirmed, will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession under the judgment.

(i) Undertaking to Stay Abatement of Nuisance on Appeal. If the judgment directs the abatement or restraint of the continuance of a public or private nuisance, its execution is not stayed on appeal unless an undertaking is entered into on behalf of the appellant by at least two sureties, for a sum as directed by the court, providing that the appellant will pay all damages that the opposing party may sustain by the continuance of the nuisance.

(j) Undertaking to Stay Other Executions on Appeal. If the judgment directs the

performing of a particular act and there is no statutory provision regarding the undertaking to be given on appeal, its execution is not stayed on appeal unless an undertaking is executed on behalf of the appellant by at least two sureties, for a sum as directed by the court. The undertaking must provide that the appellant will pay all damages sustained by the opposing party by not performing the particular act directed to be done by the judgment and as further provided by the court.

(k) To Stay Intermediate Orders on Appeal. Unless otherwise directed by the court, the execution or performance of an order must not be delayed on appeal. If required, an undertaking must be executed on behalf of the appellant by at least two sureties in an amount and under terms as directed by the court. The terms of the undertaking must be in accordance with the order, and when applicable, must correspond to the provisions of these rules regarding appeals from judgments and no appeal from judgments. The provisions must be made in all cases that will properly protect the respondent.

An appeal from an intermediate order before judgment does not stay proceedings unless the court orders otherwise.

(l) Appellate Court's Power Not Limited. While an appeal is pending, this rule does not limit the power of the appellate court or one of its judges or justices to:

(1) stay proceedings; or

(2) suspend, modify, restore, or grant an injunction; or

(3) issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(m) Stay With Multiple Claims or Parties. A court may stay the enforcement of a

final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(n) Order Staying Proceedings. The court may not order a stay of proceedings more than 21 days except to stay proceedings under an order or judgment appealed from or on previous notice to the opposing party.

EXPLANATORY NOTE

Rule 62 was amended, effective September 1, 1983; March 1, 2011:_____.

Rule 62 is derived from Fed.R.Civ.P. 62, with several added provisions~~, and changes to subdivisions (a), (b), (c), (d) and (e) to conform to the court system of North Dakota~~.

Subsection (a) was amended ~~in 1983~~, effective September 1, 1983, to provide that no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after "notice of" its entry, rather than its entry except in a default judgment the time begins to run from the date of entry. Federal subdivision (f), concerning a stay according to state law, was deleted. In its place, subdivisions (f), (g), (h), (i), (j), and (k), derived from Sections 28-2712 through 28-2717, NDRC 1943, were inserted. These contain mostly provisions requiring an undertaking to stay certain proceedings. Subdivisions (l) and (m) are identical to subdivisions (g) and (h) in the federal rule. Subdivision (n), taken from Section 28-2807, NDRC 1943, was added setting a time limit on how long an order may be made effective.

Subdivision (a) was amended, effective March 1, 2011, to increase the time of the automatic stay from 10 to 14 days.

Subdivision (a) was amended, effective _____, to increase the time of the automatic stay from 14 to 30 days. Former subdivision (b) on stay pending disposition of a motion was deleted as unnecessary given the increased period of the automatic stay.

A new subdivision (b) was added, effective_____, expanding the circumstances under which a stay by bond may be obtained. Former subdivision (d) was deleted as unnecessary given the expansion of the stay by bond under subdivision (b).

A new subdivision (c) was added, effective_____, to contain language on stay of an injunction, receivership or accounting previously found in subdivision (a). Former subdivision (c) was renumbered as subdivision (d).

Subdivision (n) was amended, effective March 1, 2011, to increase the time for an order staying proceedings from 20 to 21 days.

Rule 62 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 26, 2019, page 23; April 29-30, 2010, page 16; January 28-29, 2010, page 12; September 30-October 1, 1982, pages 6 and 12-15; November 29-30, 1979, page 19; Fed.R.Civ.P. 62.

CROSS REFERENCE: N.D.R.Civ.P. 50 (Motion for a Directed Verdict), N.D.R.Civ.P. 52 (Findings by the Court), N.D.R.Civ.P. 54 (Judgment Costs),

N.D.R.Civ.P. 59 (New Trials Amendment of Judgments), and N.D.R.Civ.P. 60 (Relief from Judgment or Order); N.D.R.App.P. 8 (Stay or Injunction Pending Appeal).

RULE 65. INJUNCTIONS

(a) Temporary restraining order. A temporary restraining order is short-lived injunctive relief that the court may issue with less notice than required for a preliminary injunction. It prevents irreparable injury until the court decides whether to issue a preliminary injunction.

(1) Motion; Proposed Complaint; Filing. The party moving for a temporary restraining order must submit a proposed complaint seeking injunctive relief with the motion. The moving party must file the motion, proposed complaint, and other supporting documents no later than the next court business day after submission. If the moving party does not timely file these documents, an issued temporary restraining order terminates at the end of that next business day.

(2) Notice. The party moving for a temporary restraining order must submit ~~an affidavit~~ a declaration reciting the efforts made to give the opposing party's attorney, if known, or if not known, the opposing party, reasonable notice of the motion or the reasons why notice should not be required. Reasonable notice means any form of notice reasonably calculated to give actual notice of the date and time of submission of the motion to the court, affording the opposing party an opportunity to be heard.

(3) Basis for Relief. The court may issue a temporary restraining order only if it finds:

(A) appropriate injunction grounds;

(B) a clear need for immediate relief; and

(C) either:

(i) the moving party gave reasonable notice or made reasonable efforts to give reasonable notice to the opposing party's attorney, if known, or if not known, to the opposing party; or

(ii) a substantial reason exists for not giving notice.

(4) Preliminary Injunction Hearing Date. Unless for good cause the court directs otherwise, a party that obtains a temporary restraining order must obtain a preliminary injunction hearing time no less than 21 days, and no more than 28 days, from the temporary restraining order date.

(5) Temporary Restraining Order Expiration. A temporary restraining order expires at the end of the 28th day after issuance unless the court for good cause directs a shorter time or the opposing party consents to a longer time. If the party that obtained the temporary restraining order cannot obtain a preliminary-injunction hearing within 21 to 28 days of the temporary restraining order date, the court may extend the temporary restraining order until the earliest possible time the motion may be heard. At or after the preliminary injunction hearing, the court may extend the temporary restraining order for no more than 14 days if necessary for deciding the preliminary injunction motion, unless for good cause a longer time is necessary. The court must enter the reasons for any extension in the record.

(6) Temporary Restraining Order Service. A party that obtains a temporary restraining order must serve the order and the notice for the preliminary injunction hearing on the opposing party as follows:

(A) Summons and Complaint Not Served. If the summons and complaint have not yet been served under Rule 4, then with the summons and complaint under Rule 4.

(B) Summons and Complaint Served. If the summons and complaint have been served under Rule 4, then under Rule 5.

(7) Motion to Dissolve or Modify.

(A) Notice and Hearing. If the opposing party received less than four days actual notice of the temporary restraining order motion before the temporary restraining order was issued, the opposing party may move to dissolve or modify the order on four days actual notice, or on shorter notice the court for good cause sets, to the party that obtained the order.

(B) Burden. The party that obtained the temporary restraining order has the burden of justifying its continuation.

(8) Not Extended by Implication. A temporary restraining order remains a temporary restraining order even if the opposing party appears in opposition to the temporary restraining order motion or the court denies a motion to dissolve or modify the temporary restraining order.

(b) Preliminary Injunction. A preliminary injunction prevents irreparable injury until the court decides whether to issue a permanent injunction at trial. A court may issue a preliminary injunction only after the Rule 65(b)(1) required notice of hearing. The moving party must file and serve the summons and complaint under Rule 4 no later than the time the party serves and files the notice of motion and motion for a preliminary injunction.

(1) Notice and Hearing. Unless for good cause the court directs otherwise, the court may issue a preliminary injunction only when the moving party serves the preliminary injunction motion, supporting brief, and supporting materials on the opposing party at least 14 days before the hearing date.

(2) Briefing Schedule. Unless for good cause the court directs otherwise, the briefing schedule for a preliminary-injunction motion is as follows:

(A) Temporary Restraining Order in Place. When the moving party moves for a preliminary injunction with a temporary restraining order in place, the moving party must serve the preliminary injunction motion, supporting brief, and supporting materials within seven days after the temporary restraining order date. The opposing party must serve the response brief and supporting materials within seven days after service of the moving party's brief. Only on order of the court, for good cause shown, may the moving party serve a reply brief. Unless good cause is shown, the court must dissolve the temporary restraining order if the party that obtained it does not timely serve the preliminary injunction motion, supporting brief, and supporting materials.

(B) Temporary Restraining Order Not in Place. When the moving party moves for a preliminary injunction without a temporary restraining order in place, the moving party must serve the preliminary-injunction motion, supporting brief, and supporting materials on the opposing party. The opposing party must serve the response brief and supporting materials within seven days after service of the moving party's brief. The moving party must serve any reply brief within five days after service of the opposing party's response brief.

(3) Interim Relief. If at the hearing on a preliminary injunction motion brought without a temporary restraining order in place, the moving party shows appropriate injunction grounds and the clear need for immediate relief, the court may on its own motion issue a temporary restraining order effective for no more than 14 days. The court may extend this order for good cause, but must enter the reasons for any extension in the record.

(c) Unnamed Parties. Any unnamed party that a temporary restraining order or preliminary injunction would or does directly affect may be heard at an injunction hearing.

(d) Evidence.

(1) Temporary Restraining Order Evidence. Unless the court directs otherwise, evidence on a motion for a temporary restraining order, or a motion to dissolve or modify a temporary restraining order, must be by ~~affidavit~~ declaration. ~~An affidavit~~ A declaration supporting or opposing a motion for a temporary restraining order or a motion to dissolve or modify a temporary restraining order may be based on information and belief. The ~~affiant~~ declarant must identify those parts of the ~~affidavit~~ declaration based on personal knowledge and those based on information and belief.

(2) Preliminary Injunction Evidence. Unless the court directs otherwise, evidence on a motion for a preliminary injunction may be by oral testimony. ~~An affidavit~~ A declaration supporting or opposing a preliminary injunction must be based on personal knowledge and served with the parties' briefs. The court may permit additional ~~affidavits~~ declarations to be filed at or after the hearing.

(e) Trial on Permanent Injunction. If the court issues a preliminary injunction, the trial must be held within 180 days from the date a temporary restraining order or preliminary injunction was first issued unless the court for good cause extends the time or the opposing party consents to a longer time. The court should issue its decision within 60 days after the trial, unless for good cause a longer time is necessary. The court must enter the reasons for any extension in the record.

(f) Previous Denial. A party moving for a temporary restraining order or preliminary injunction must state in the motion whether a judge previously denied the motion or a similar motion based on the same transaction or occurrence or series of transactions or occurrences, and if so, the identity of the judge or judges who denied the motion.

(g) Findings; Contents and Scope of Injunction.

(1) Findings. The court must state its findings of fact and conclusions of law under Rule 52 supporting the denial, issuance, dissolution or modification of an injunction. If the court issues a temporary restraining order without reasonable notice to the opposing party's attorney or the opposing party, the court must state why it issued the order without that notice.

(2) Contents.

(A) In General. Every temporary restraining order, preliminary injunction, and permanent injunction must:

(i) state its terms specifically.

(ii) describe in reasonable detail, and not by referring to the complaint or other

document, the acts restrained or required.

(B) Temporary Restraining Order. Unless the court specifically finds the opposing party received four day's actual notice of the temporary restraining order motion before the temporary restraining order was issued, the temporary restraining order must state that the opposing party may move to dissolve or modify the order under Rule 65(a)(7) on four day's actual notice, or on shorter notice the court for good cause sets, to the party that obtained the order.

(3) Persons Bound. A temporary restraining order, preliminary injunction, and permanent injunction binds only the following that receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other parties that are in active concert or participation with anyone described in Rule 65(g)(3)(A) or (B).

(4) Clarification. Any party subject to, or potentially subject to, a temporary restraining order, preliminary injunction, or permanent injunction may move the court to clarify whether the order or injunction would apply to specified conduct.

(h) Security.

(1) In General. Except for good cause shown and recited in the record, a temporary restraining order or preliminary injunction does not become effective for enforcement until the moving party posts security in a form and amount that the court considers sufficient to pay the enjoined party's costs and damages if the court ultimately decides the

moving party was not entitled to the order or injunction.

(2) No Security Required. The United States, the State of North Dakota, or an agency or political subdivision of either, or an officer of any of these acting in an official capacity, need not provide security.

(3) Form of Security. The moving party may give the security in any form the court considers sufficient to secure the opposing party. Security may include a surety on a bond or other undertaking, a cashier's check, a certified check, a letter of credit, or a negotiable bond.

(4) Additional Security. A party enjoined under a temporary restraining order or preliminary injunction may move the court for security if the court did not initially require it, or additional or different security if the court did require it. If the court decides on motion that security, or different or additional security, is required, it must vacate the order or injunction unless the party that obtained it provides the form and amount of security that the court requires within a reasonable time established by the court.

(5) Not a Cap. The amount of security does not limit the costs and damages a wrongfully-enjoined party may recover from the party that obtained the temporary restraining order or preliminary injunction.

(i) Contempt. The court may punish disobedience of a temporary restraining order, preliminary injunction, or permanent injunction as a contempt.

(j) Other Laws Not Modified. This rule does not modify statutes or rules that prescribe specific procedures for obtaining injunctive relief in any of the following actions:

(1) actions affecting employer and employee;

(2) actions for divorce, child or spousal support, parental rights and responsibilities, or domestic violence; or

(3) actions involving disorderly conduct.

EXPLANATORY NOTE

Rule 65 was amended, effective July 1, 1981; July 1, 2012; March 1, 2014;_____.

Rule 65 is designed to provide a framework for injunction procedure in North Dakota. It integrates elements of the state's injunction procedure statutes, now superseded, with the federal rule on injunctions, Fed.R.Civ.P. 65, and concepts from injunction rules from other states.

Grounds for granting a permanent injunction are listed in N.D.C.C. § 32-05-04. Grounds for granting a temporary restraining order or preliminary injunction are listed in N.D.C.C. § 32-06-02.

The court should promptly hear and decide a motion to dissolve or modify a temporary restraining order. If the parties stipulate, the court may convert the hearing on the motion to dissolve or modify into the preliminary injunction hearing.

If the parties stipulate, the court may advance the trial and consolidate it with the preliminary injunction hearing. The parties and the court should take care, however, to preserve the right a party may have to a jury trial on issues separate from the issue of injunctive relief.

An opposing party may combine a Rule 65(h)(4) motion for security, or additional

or different security, with a Rule 65(a)(7) motion to dissolve or modify a temporary restraining order.

Subdivision (g) was amended, effective March 1, 2014, to include references to permanent injunctions.

Rule 65 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, page 25; January 31-February 1, 2013, pages 25-26; April 28-29, 2011, pages 2-8; January 27-28, 2011, pages 2-29; April 29-30, 2010, pages 27-28; January 28-29, 2010, page 14; January 17-18, 1980, pages 5-6.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 32-06-03, 32-06-04, 32-06-05, 32-06-06, 32-06-07, 32-06-08, 32-06-09, 32-06-10, 32-06-11.

CONSIDERED: N.D.C.C. chs. 12.1-31.2, 14-07.1, 31-15, 32-05; §§ 32-06-01, 32-06-02.

CROSS REFERENCE: N.D.R.Civ.P. 11. (Signing of Pleadings, Motions and Other Papers; Representations to Court; Sanctions)

RULE 4.1. COMPLAINT, WARRANT, OR SUMMONS BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

(a) In General. The magistrate may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons.

(b) Procedures. If the magistrate decides to proceed under this rule, the following procedures apply:

(1) Taking Testimony Under Oath. The magistrate must place under oath - and may examine - the applicant and any person on whose testimony the application is based.

(2) Creating a Record of the Testimony and Exhibits.

(A) Testimony Limited to Attestation. If the applicant does no more than attest to the contents of a written ~~affidavit~~ declaration submitted by reliable electronic means, the magistrate must acknowledge the attestation in writing on the ~~affidavit~~ declaration.

(B) Additional Testimony or Exhibits. If the magistrate considers additional testimony or exhibits, the magistrate must:

(i) ensure the testimony is recorded verbatim by an electronic recording device, by a court reporter or recorder, or in writing;

(ii) ensure any recording or notes are filed, transcribed on request, and any transcription is certified as accurate;

(iii) sign any other written record and ensure it is certified as accurate and filed; and

(iv) ensure the exhibits are filed.

(3) Preparing a Proposed Duplicate Original of a Complaint, Warrant, or Summons. The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the magistrate.

(4) Preparing an Original Complaint, Warrant, or Summons. If the applicant reads the contents of the proposed duplicate original, the magistrate must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original.

(5) Modification. The magistrate may modify the complaint, warrant, or summons. The magistrate must then:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(6) Issuance. To issue the warrant or summons, the magistrate must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant or summons; and

(C) transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the magistrate's name and enter the date and time on the duplicate original.

(c) Suppression Limited. Absent a finding of bad faith, evidence obtained from a

warrant issued under this rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

EXPLANATORY NOTE

Rule 4.1 was adopted, effective March 1, 2013; amended, effective_____. Rule 4.1 is an adaptation of Fed.R.Crim.P. 4.1.

Rule 4.1 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

Sources: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 26-27, 2012, pages 22-25; Fed.R.Crim.P. 4.1.

CROSS REFERENCE: N.D.R.Crim.P. 3 (The Complaint); N.D.R.Crim.P. 4 (Arrest Warrant or Summons Upon Complaint); N.D.R.Crim.P. 9(Warrant or Summons Upon Indictment or Information); N.D.R.Crim.P. 41 (Search and Seizure).

RULE 5. INITIAL APPEARANCE BEFORE THE MAGISTRATE

(a) General.

(1) Appearance Upon an Arrest. An officer or other person making an arrest must take the arrested person without unnecessary delay before the nearest available magistrate.

(2) Arrest Without a Warrant. If an arrest is made without a warrant, the magistrate must promptly determine whether probable cause exists under Rule 4(a). If probable cause exists to believe that the arrested person has committed a criminal offense, a complaint or information must be filed in the county where the offense was allegedly committed. A copy of the complaint or information must be given within a reasonable time to the arrested person and to any magistrate before whom the arrested person is brought, if other than the magistrate with whom the complaint or information is filed.

(b) Statement by the Magistrate at the Initial Appearance.

(1) In All Cases. The magistrate must inform the defendant of the following:

(A) the charge against the defendant and any accompanying ~~affidavit~~ declaration;

(B) the defendant's right to remain silent; that any statement made by the defendant may later be used against the defendant;

(C) the defendant's right to the assistance of counsel before making any statement or answering any questions;

(D) the defendant's right to be represented by counsel at each and every stage of the proceedings;

(E) if the offense charged is one for which counsel is required, the defendant's right to have legal services provided at public expense to the extent that the defendant is unable to pay for the defendant's own defense without undue hardship; and

(F) the defendant's right to be admitted to bail under Rule 46.

(2) Felonies. If the defendant is charged with a felony, the magistrate must inform the defendant also of:

(A) the defendant's right to a preliminary hearing;

(B) the defendant's right to the assistance of counsel at the preliminary hearing;

(C) that a defendant who is not a United States citizen may request that an attorney for the state or a law enforcement officer notify a consular officer from the defendant's country of nationality that the defendant has been arrested.

(3) Misdemeanors. If the defendant is charged with a misdemeanor, the magistrate must inform the defendant also of the defendant's right to trial by jury in all cases as provided by law and of the defendant's right to appear and defend in person or by counsel.

(c) Right to Preliminary Hearing.

(1) Waiver.

(A) If the offense charged is a felony, the defendant has the right to a preliminary hearing. The defendant may waive the right to preliminary hearing at the initial appearance if assisted by counsel.

(B) If the defendant is assisted by counsel and waives preliminary hearing and the magistrate is a judge of the district court, the defendant may be permitted to plead to the offense charged in the complaint or information at the initial appearance.

(C) If the defendant waives preliminary hearing and does not plead at the initial appearance, an arraignment must be scheduled.

(D) The magistrate must admit the defendant to bail under the provisions of Rule 46.

(2) Non-waiver. If the defendant does not waive preliminary hearing, the defendant may not be called upon to plead to a felony offense at the initial appearance. A magistrate of the county in which the offense was allegedly committed must conduct the preliminary hearing. The magistrate must admit the defendant to bail under the provisions of Rule 46.

(d) Reliable Electronic Means. Contemporaneous audio or audiovisual transmission by reliable electronic means may be used to conduct an appearance under this rule as permitted by N.D. Sup. Ct. Admin. R 52.

(e) Uniform Complaint and Summons.

(1) In General. Notwithstanding Rule 5(a), a uniform complaint and summons may be used in lieu of a complaint and appearance before a magistrate, whether an arrest is made or not, for an offense that occurs in an officer's presence or for a motor vehicle or game and fish offense. An individual held in custody must be brought before a magistrate for an initial appearance without unnecessary delay.

(2) Duty of Prosecuting Attorney. When a uniform complaint and summons is issued for a felony offense, the prosecuting attorney must also subsequently file a complaint or information that complies with Rule 5(a). If the prosecuting attorney after review declines to prosecute a charge that has been filed with the court on a uniform

complaint and summons, a dismissal of the charge must be stated on the complaint or information or filed separately with the court.

EXPLANATORY NOTE

Rule 5 was amended effective March 1, 1990; January 1, 1995; March 1, 2006; June 1, 2006; March 1, 2010; August 1, 2011; March 1, 2016; March 1, 2017;_____.

Rule 5 is derived from Fed.R.Crim.P. 5. Rule 5 is designed to advise the defendant of the charge against the defendant and to inform the defendant of the defendant's rights. This procedure differs from arraignment under Rule 10 in that the defendant is not called upon to plead.

Subdivision (a) provides that an arrested person must be taken before the magistrate "without unnecessary delay." Unnecessary delay in bringing a person before a magistrate is one factor in the totality of circumstances to be considered in determining whether incriminating evidence obtained from the accused was given voluntarily.

Subdivision (a) was amended, effective January 1, 1995, to clarify that a "prompt" judicial determination of probable cause is required in warrantless arrest cases.

Subdivision (b) is designed to carry into effect the holding of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966). Because the Miranda rule is constitutionally based, it applies to all officers whether state or federal. One should note that the protections required by Miranda apply as soon as a person "has been taken into custody or otherwise deprived of his freedom of action in any significant way," while the requirement that an accused be taken before a magistrate is applicable

only to an "arrested person." The Miranda decision is based upon the Fifth Amendment privilege against self-incrimination, and holds that no statement obtained by interrogation of a person in custody is admissible, unless, before the interrogation begins, the accused has been effectively warned of the accused's rights, including the right not to answer questions and the right to have counsel present.

Subdivision (b) specifies the action which must be taken by the magistrate. Subparagraphs (b)(1)(A), (b)(1)(B), and (b)(1)(C) are stated by Miranda to be absolute prerequisites to interrogation and cannot be dispensed with on even the strongest showing that the person in custody was aware of those rights.

Paragraph (b)(1) was amended, effective June 1, 2006, to remove a reference to court appointment of counsel for indigents. Courts ceased appointing counsel for indigents on January 1, 2006, when the North Dakota Commission on Legal Counsel for Indigents became responsible for defense of indigents.

Paragraph (b)(2) provides an additional requirement to the instructions given by the magistrate in paragraph (b)(1) when the charge is a felony. It requires the magistrate to inform the defendant of the right to a preliminary hearing. The Sixth Amendment right to counsel applies to a preliminary hearing granted under state law because the preliminary hearing is a critical stage of the state's criminal process.

Paragraph (b)(2) was amended, effective March 1, 2016, to require the defendant in a felony case to be informed at the initial appearance of the right of a defendant who is not a U.S. citizen to request that a consular officer be informed of the defendant's arrest. This amendment was based on the December 1, 2014 amendment to Fed.R.Crim.P. 5.

Subdivisions (b) and (c) were amended, effective March 1, 1990. The amendments track the 1987 amendments to Fed.R.Crim.P. 5, which are technical in nature, and no substantive change is intended.

Subdivision (c) was amended, effective January 1, 1995, in response to elimination of county courts and to ensure that a defendant is not called upon to waive the preliminary hearing or to plead without the assistance of counsel at the initial appearance.

Subdivision (d) was amended, effective March, 1, 2004, to permit the use of interactive television to conduct initial proceedings. Subdivision (d) was amended, effective March 1, 2006, to reference N.D.Sup.Ct.Admin.R. 52, which governs proceedings conducted by interactive television. Subdivision (d) was further amended, March 1, 2016, to allow the use of contemporaneous audio or audiovisual transmission by reliable electronic means to conduct initial proceedings.

Subdivision (e) was added, effective March 1, 2010, to provide a procedure for using the uniform complaint and summons. Statutory provisions governing the uniform complaint and summons, which is commonly referred to as the ?uniform citation,? are in N.D.C.C. §§ 20.1-02-14.1 and 29-05-31.

Subdivision (e) was amended, effective March 1, 2016, to require the prosecuting attorney to file a written dismissal if the prosecuting attorney decides not to pursue a charge filed with the court on a uniform complaint and summons.

Rule 5 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and

terminology consistent throughout the rules.

Rule 5 was amended, effective August 1, 2011, to include new language indicating that either the complaint or information can be used as a charging document. N.D.C.C. § 29-04-05 was amended in 2011 to specify that "A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned."

Rule 5 was amended, effective March 1, 2017, to replace the term "preliminary examination" with "preliminary hearing" throughout the rule.

Rule 5 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; May 12-13, 2016, page 29; September 24-25, 2015, page 15; April 23-24, 2015, pages 14-15; April 28-29, 2011, pages 17-18; May 21-22, 2009, pages 2-10; April 27-28, 2006, pages 2-5, 15-17; January 29-30, 2004, pages 22-23; September 26-27, 2002, pages 12-13; January 27-28, 1994, pages 3-5; September 23-24, 1993, pages 4-7; April 20, 1989, page 4; December 3, 1987, page 15;February 22-23, 1973, page 18; March 23-24, 1972, pages 2-3, 11-12; January 27, 1972, pages 17-22; November 21-22, 1969, pages 2, 8-9, 17-19; May 3-4, 1968, pages 1-2; January 26-27, 1968, pages 7-9.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-05-04, 9-05-11, 29-05-17, 29-05-19, 29-07-01, 29-07-02, 29-07-04, 29-07-05, 29-07-07, 29-07-08, 29-07-09, 29-07-10, 33-12-07, 33-12-09.

CONSIDERED: N.D.C.C. ch. 31-15, §§ 20.1-02-14.1, 29-04-05, 29-05-31, 29-07-03, 29-07-06, 40-18-15, 40-18-16, 40-18-18.

CROSS REFERENCES: N.D.R.Crim.P. 5.1 (Preliminary Hearing); N.D.R.Crim.P. 10 (Arraignment); N.D.R.Crim.P. 35 (Correcting or Reducing a Sentence); N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Crim.P. 44 (Right to and Assignment of Counsel); N.D.Sup.Ct.Admin.R. 52 (Contemporaneous Transmission by Reliable Electronic Means).

RULE 9. WARRANT OR SUMMONS UPON INDICTMENT OR INFORMATION

(a) Issuance. The court must issue an arrest warrant for each defendant named in the indictment or information, if it is supported by a showing of probable cause as required in Rule 4(a). The court need not issue a warrant for any defendant who has been held to answer for any offense charged. After a showing of probable cause, the court may issue a summons instead of a warrant on its own motion or at the request of the prosecuting attorney. On like request or on its own motion, the court may issue more than one warrant or summons for the same defendant. The court must issue the arrest warrant or summons to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to a summons, the court must issue a warrant.

(b) Form.

(1) Warrant. The warrant must conform to Rule 4(b)(1), describe the offense charged in the indictment or information, and command that the defendant be arrested and brought before the court. The court may fix the amount of bail and endorse it on the warrant.

(2) Summons. The summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant must be executed or the summons served as provided in Rule 4(c)(1) and (2).

(2) Return. A warrant or summons must be returned in accordance with Rule 4(d).

(d) Warrant or Summons by Telephone or Other Means. In accordance with Rule 4.1, the magistrate may issue a warrant or summons based on information communicated by telephone or other reliable electronic means.

EXPLANATORY NOTE

Rule 9 was amended, effective March 1, 2006; March 1, 2013. The explanatory note was amended effective March 1, 2017;_____.

Rule 9 is an adaptation of Fed.R.Crim.P. 9, and provides for the issuance of a warrant or summons upon indictment or information. The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing * * * persons * * * to be seized." If an indictment has been returned, the Fourth Amendment is satisfied and the warrant can issue on request without more, since the indictment is made on the oath of the grand jury. The provision for showing of the "probable cause" as required in Rule 4(a) makes explicit the fact that a warrant or summons can issue on the basis of an information only if the information or ~~affidavit~~ declaration filed with the information shows probable cause for the arrest warrant or summons. Generally, prosecution on information has as a prerequisite a determination of probable cause at a preliminary hearing. Exceptions are listed in N.D.C.C. § 29-09-02.

Subdivision (b) incorporates by reference the provisions of Rule 4(b) concerning the form of the warrant or summons. The minor additional requirements of this rule reflect the different stage in the proceeding at which the warrant or summons is being issued. The amount of bail may be fixed by the court and endorsed on the warrant. See

Rule 46 (Release from Custody).

Paragraph (c)(1) incorporates by reference portions of Rule 4(c) dealing with the execution of a warrant and service of a summons.

Paragraph (c)(2), dealing with return, is virtually the same as Rule 4(d), providing for return of a warrant or summons issued on the complaint. At the request of the prosecuting attorney, any unexecuted warrant must be returned and canceled. On or before the return day, the person to whom a summons was delivered for service must make a return to the court.

Subdivision (d) was added, effective March 1, 2013, to allow the magistrate to issue a warrant or summons based on information communicated by telephone or other reliable electronic means under the procedure set out in Rule 4.1.

Rule 9 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

The explanatory note was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; May 12-13, 2016, page 29; April 26-27, 2012, pages 9-10; January 26-27, 2012,page 26;

January 29-30, 2004, page 26; March 23-25, 1972, pages 16-20; May 15-16, 1969, page 7; May 3-4, 1968, page 7; Fed.R.Crim.P. 9.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-12-03, 29-12-04, 29-12-06, 29-12-08.

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCES: N.D.R.Crim.P. 4 (Arrest Warrant or Summons Upon Complaint); N.D.R.Crim.P. 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means); N.D.R.Crim.P. 46 (Release from Custody); N.D.C.C. § 29-09-02 (Prosecution on Information—In what cases).

RULE 32.1. DEFERRED IMPOSITION OF SENTENCE

An order deferring imposition of sentence must require that, 61 days after expiration or termination of probation:

(a) the defendant's guilty plea be withdrawn, or the guilty verdict be set aside;

(b) the case be dismissed; and

(c) the file be sealed.

The court may, by order, modify an order deferring imposition of sentence if a petition for revocation is filed no later than 60 days after expiration or termination of probation or if there is an outstanding bench warrant in the matter for which imposition of sentence was deferred.

EXPLANATORY NOTE

Rule 32.1 was amended, effective March 1, 2006; March 1, 2012; March 1, 2019;_____.

Rule 32.1 was adopted, effective March 1, 1999. The purpose of the rule is to provide uniformity in the processing of deferred impositions of sentence, and to prevent the disparity of treatment received by defendants depending upon their county of venue in misdemeanor cases.

When deferring imposition of sentence, the judge should advise the defendant if the defendant fulfills the conditions of probation the guilty plea will be withdrawn, or the guilty verdict set aside, the case dismissed, and the file sealed.

An order deferring imposition of sentence is not a judgment. However, for purpose

of appeal, an order deferring imposition of sentence is equivalent to a judgment under N.D.R.Crim.P. 32(b).

This rule does not follow Fed.R.Crim.P. 32.1, which deals with revoking or modifying probation or supervised release.

Rule 32.1 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

~~Rule 32.1 was amended, effective March 1, 2012, to clarify that any modification of an order deferring imposition of sentence must take place no later than 60 days after the expiration or termination of probation.~~

Rule 32.1 was amended, effective _____, to clarify that a petition seeking revocation of probation or modification of an order deferring imposition of sentence must be filed no later than 60 days after expiration or termination.

Rule 32.1 was amended, effective March 1, 2019, to delete language that made the rule applicable only in misdemeanor and infraction cases. Under the amendment, the rule applies in all cases in which an order deferring imposition of sentence was entered.

SOURCES: Joint Procedure Committee Minutes of September 26, 2019, pages 19-20; April 27, 2018, pages 6-7; September 23-24, 2010, pages 23-24; January 27-28, 2005, page 29; January 29-30, 1998, pages 14-17; September 25-26, 1997, pages 8-10.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. §§ 12.1-32-02, 12.1-32-07.1, 12.1-32-07.2.

CROSS REFERENCE: N.D.R.Crim.P. Form 8 (Order Deferring Imposition of Sentence).

RULE 32.2. PRETRIAL DIVERSION

(a) Agreements Permitted.

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

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

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

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

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

(D) that the defendant pay to the court fees or costs allowed by law;

(E) that the defendant pay to others additional amounts as agreed upon by the parties;

(F) that the defendant perform specified community service.

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

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

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

(d) Termination of Agreement; Resumption of Prosecution. The court may order the agreement terminated and the prosecution resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds:

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

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

the agreement.

(e) Emergency Order. The court by warrant may direct any officer authorized by law to bring the defendant before the court for the hearing of the motion if the court finds from ~~affidavit~~ a declaration or testimony:

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

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

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

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

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

(2) if the court determines that the interests of justice require, order the agreement terminated, dismiss the prosecution, and bar further prosecution for the offense involved.

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

EXPLANATORY NOTE

Rule 32.2 was adopted March 1, 2009. Amended effective March 1, 2013; March 1, 2019;_____.

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

Paragraph(a)(2)(D) was amended, effective March 1, 2013, to include payment of fees or costs as a condition to a pretrial diversion agreement. The paragraph was further amended, effective March 1, 2019, to specify that fees or costs allowed under the law are to be paid to the court.

A new paragraph (a)(2)(E) was added, effective March 1, 2019, to allow the parties to agree that the defendant pay additional amounts to others as a condition of a pretrial diversion agreement.

Rule 32.2 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the

required form for an unsworn declaration.

Sources: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 25, 2018, pages 8-11; September 30, 2011, pages 19-20; October 11-12, 2007, pages 15-20; April 26-27, 2007, pages 23-27.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. chs. 29-01, 31-15.

CROSS REFERENCE: N.D.Sup.Ct.Admin.R. 41 (Access to Court Records).

RULE 33. NEW TRIAL

(a) Defendant's Motion. On the defendant's motion, the court may vacate any judgment and grant a new trial to that defendant if the interest of justice so requires. A motion for a new trial must specify the alleged defects and errors with particularity. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Motions.

(1) Newly Discovered Evidence. Any motion for a new trial based on newly discovered evidence must be filed within three years after the verdict or finding of guilty and be supported by ~~an affidavit~~ a declaration.

(2) Other Grounds. Any motion for a new trial based on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty. Any motion for a new trial based on jury misconduct must be supported by ~~an affidavit~~ a declaration. Any motion for a new trial based on any other grounds may be made on the file, exhibits, and minutes of the court. Pertinent facts not a part of the minutes may be shown by ~~affidavit~~ declaration except as otherwise provided in these rules. Either party may procure a complete or partial transcript of the proceedings for use on the hearing of the motion.

(3) Appeal Pending. If an appeal is pending, the court may not grant a motion for a new trial until the case is remanded.

(c) ~~Affidavits~~ Declarations.

(1) Response to ~~Affidavit~~ Declaration. If a motion for a new trial is based on ~~an~~ ~~affidavit~~ a declaration, the ~~affidavit~~ declaration must be served with the notice of motion. The opposing party may respond with opposing ~~affidavits~~ declarations, which must be served within 14 days after service of the motion for new trial. The court may extend the period for filing an opposing ~~affidavit~~ declaration and may permit reply ~~affidavits~~ declarations.

(2) ~~Affiant's~~ Declarant's Attendance. If ~~an affidavit~~ a declaration is presented to the court in support of or in opposition to a motion for a new trial and the ~~affiant~~ declarant is a resident of this state, the court may require the ~~affiant~~ declarant to attend a hearing for examination under oath.

(d) Other Post-Conviction Remedies. Nothing in this rule may be construed to affect the remedies provided by N.D.C.C. ch. 29-32.1.

EXPLANATORY NOTE

Rule 33 was amended, effective January 1, 1979; March 1, 1990; March 1, 2000; March 1, 2006; March 1, 2007; March 1, 2011;_____.

Subdivision (b) was amended, effective March 1, 2000, to provide the time for moving for a new trial runs from the "verdict or finding of guilty" rather than the "final judgment." The amendment also extended the time for moving for a new trial based on newly discovered evidence from two to three years.

Paragraph (b)(1) was amended, effective March 1, 2006, to eliminate the requirement that a motion for a new trial based on newly discovered evidence be made within 30 days after discovery of the new evidence.

Paragraph (b)(2) was amended, effective March 1, 2006, to increase the time to make a motion for new trial for a reason other than newly discovered evidence from seven to ten days. Paragraph (c)(1) was concurrently amended to increase the time to respond to a new trial ~~affidavit~~ declaration from seven to ten days.

Paragraph (b)(2) was amended, effective March 1, 2007, to eliminate the requirement that the trial court decide a motion for extension of time within ten days. Motions for extension of time must be made under Rule 45(b).

Paragraph (b)(2) was amended, effective March 1, 2011, to increase the time to make a motion for new trial for a reason other than newly discovered evidence from 10 to 14 days. Paragraph (c)(1) was concurrently amended to increase the time to respond to a new trial ~~affidavit~~ declaration from 10 to 14 days.

Rule 33 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Under this rule, the court has no power to order a new trial on its own motion, but may act only upon a timely motion made by the defendant. This provision is intended to avoid problems of double jeopardy. The rule does not affect the power of the court to declare a mistrial and order a new trial prior to the verdict or finding of guilty.

A timely motion for a new trial suspends the time to appeal from the judgment of conviction. An appeal may be taken within 30 days after entry of the order denying the motion for a new trial. The appeal may then be taken from the judgment of conviction

using the grounds raised in the motion for a new trial.

To prevail on a motion for a new trial on the ground of newly discovered evidence, the defendant must show (1) the evidence was discovered after trial, (2) the failure to learn about the evidence at the time of trial was not the result of the defendant's lack of diligence, (3) the newly discovered evidence is material to the issues at trial, and (4) the weight and quality of the newly discovered evidence would likely result in an acquittal.

Minutes include the unofficial and untranscribed notes of the court reporter or court recorder and notes of the clerk of court indicating which exhibits have been received. The file includes all formal documents in the court file.

Rule 33 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; April 29-30, 2010, page 20; January 26, 2006, page 10; April 28-29, 2005, page 33; January 27-28, 2005, pages 29-31; May 6-7, 1999, pages 17-18; April 20, 1989, page 4;December 3, 1987, page 15; January 12-13, 1978, pages 6-7; June 2-3, 1977, pages 5-7; December 11-15, 1972, pages 16-19; September 26-27, 1968, pages 16-17; Fed.R.Crim.P. 33.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. ch. 29-24.

CONSIDERED: N.D.C.C. ch. 31-15; §§ 29-23-11, 29-28-29, ch. 29-32, ch. 29-32.1, ch. 31-03.

CROSS REFERENCE: N.D.R.App.P. 4 (Appeals—When taken); N.D.R.Crim.P. 37 (Appeal as of Right to District Court; How Taken); N.D.R.Crim.P. 45 (Computing and Extending Time); N.D.R.Crim.P. 47 (Motions).

RULE 44. RIGHT TO COUNSEL

(a) Right to Counsel.

(1) Felony Cases. An indigent defendant facing a felony charge in state court is entitled to have counsel provided at public expense to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

(2) Non-Felony Cases. An indigent defendant facing a non-felony charge in state court is entitled to have counsel provided at public expense to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right or the magistrate determines that sentence upon conviction will not include imprisonment.

(3) Non-Indigent Defendants. The court may appoint counsel to represent a defendant at the defendant's expense if the defendant is unable to obtain counsel and is not indigent.

(b) Inquiry Into Joint Representation.

(1) Joint Representation. Joint representation occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) Court's Responsibilities in Cases of Joint Representation. ~~The~~ Except as

provided under Rule 44(c)(2), the court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

(c) Limited and Joint Representation for Pretrial Release.

(1) Limited Representation. The court may permit a limited appearance by counsel for purposes of release from custody under Rule 46. Counsel appearing on a limited basis will be discharged upon the court's Rule 46 determination.

(2) Joint Representation. The court may permit counsel to jointly represent defendants at an initial appearance under Rule 5 for purposes of establishing pretrial release conditions under Rule 46(a)(1). If joint representation creates an apparent conflict of interest, the court must inquire and advise each defendant under Rule 44(b)(2).

EXPLANATORY NOTE

Rule 44 was amended, effective September 1, 1983; March 1, 1990; March 1, 2001 in Supreme Court Docket No. 20000212 & 20000276; March 1, 2004; March 1, 2006; June 1, 2006;_____.

Rule 44 is a modification of Fed.R.Crim.P. 44 governing the appointment of counsel. In non-felony cases, counsel for an indigent defendant will be provided when the defendant faces a term of imprisonment, including a suspended sentence of imprisonment or a deferred imposition of sentence, unless imprisonment is waived. In contrast, Fed.R.Crim.P. 44 requires appointment of counsel for all indigent defendants.

Rule 44 was amended, effective June 1, 2006, to remove references to appointment of counsel for indigents. Under N.D.C.C. § 54-61-01(1), courts are responsible for determining whether defendants qualify for indigent defense services. Effective January 1, 2006, however, courts ceased appointing counsel for indigents because the North Dakota Commission on Legal Counsel for Indigents became responsible for the defense of indigents.

Rule 44 was amended, effective September 1, 1983, to add the words "in the courts of this state" in each of the first two sentences to make it clear that counsel for indigent defendants will be provided at public expense only in proceedings through appeal in the courts of North Dakota.

Rule 44 was amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 44 was amended, effective March 1, 2001, to authorize an application for financial assistance ex parte. Language allowing application to the court for investigative, expert and related services was deleted, effective June 1, 2006. On January 1, 2006, the North Dakota Commission on Legal Counsel for Indigents became responsible for providing these services to indigent defendants. Authorization for state funded mental health services for certain defendants is governed by N.D.C.C. § 12.1-04.1-02.

Rule 44 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (b) was added, effective March 1, 2006, to explain the court's duties in situations involving joint representation of multiple defendants. A court inquiry is necessary in these cases because serious conflicts can develop when a single attorney represents defendants who may have different interests.

Subdivision (c) was added, effective _____, to provide a procedure for the use of limited and joint representation for pretrial release proceedings.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 2-3; January 30, 2020, pages 2-7; April 27-28, 2006, pages 2-5, 15-17; January 26, 2006, pages 7-9; January 27-28, 2005, pages 36-37; September 18-19, 2003, pages 27-31; January 27-28, 2000, pages 3-4; September 23-24, 1999, pages 3-6; April 20, 1989, page 4; December 3, 1987, page 15; September 30-October 1, 1982, page 22; October 15-16, 1981, page 15; April 24-26, 1973, page 14; December 11-15, 1972, pages 44-48; May 6-8, 1971, pages 1-11; November 20-21, 1969, pages 3-8; July 10-11, 1969, pages 16-22; Fed.R.Crim.P. 44.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-07-01, 29-07-04, 29-13-03, 33-12-09.

CONSIDERED: N.D.C.C. §§ 12-59-15, 12.1-04.1-02, 29-01-06, 29-20-01.

CROSS REFERENCE: N.D.R.Crim.P. 5 (Initial Appearance Before the Magistrate); N.D.R.Crim.P. 8 (Joinder of Offenses or Defendants); N.D.R.Crim.P. 13 (Joint Trial of Separate Cases); N.D.R.Crim.P. 43 (Defendant's Presence).

RULE 46. RELEASE FROM CUSTODY

(a) Release Before Trial.

(1) In General. At the initial appearance before a magistrate of a person charged with an offense, the magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that unconditional release will not reasonably assure the appearance of the person as required.

(2) Setting Release Conditions. If the magistrate concludes that unconditional release is not appropriate, release conditions may be imposed, either in lieu of or in addition to the methods of release specified in Rule 46(a)(1). The magistrate may impose any release condition that will reasonably assure the appearance of the person for trial including:

(A) placing the person in the custody of a designated person or organization agreeing to supervise the person;

(B) requiring the person to maintain employment, or, if unemployed, to actively seek employment;

(C) requiring the person to maintain or begin an educational program;

(D) placing restrictions on the travel, association, or place of abode of the person during the period of release;

(E) requiring the person to avoid all contact with an alleged victim of the crime or

with a potential witness who may testify concerning the offense;

(F) requiring the person to report on a regular basis to a designated law enforcement agency, or any other agency;

(G) requiring the person to comply with a specified curfew;

(H) requiring the person to refrain from possessing a firearm, destructive device, or other dangerous weapon;

(I) requiring the person to refrain from any use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in N.D.C.C. ch. 19-03.1, without a prescription by a licensed medical practitioner;

(J) requiring the person to undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and to remain in a specified institution if required for that purpose;

(K) requiring the execution of an appearance bond in a specified amount and the deposit with the court of cash or other security as directed, in an amount not to exceed ten percent of the amount of the bond, which deposit must be returned on performance of the release conditions;

(L) requiring the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu of a bail bond; or

(M) imposing any other conditions reasonably necessary to assure appearance as required, including a condition requiring the return of the person to custody after a specified time of day.

(3) Release Condition Factors. In determining conditions of release that will

reasonably assure appearance of a person, the magistrate, on the basis of available information, must consider:

(A) the nature and circumstances of the offense charged;

(B) the weight of the evidence against the person;

(C) the person's family ties, employment, financial resources, character and mental condition;

(D) the length of the person's residence in the community;

(E) the person's record of convictions;

(F) the person's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear voluntarily at court proceedings; and

(G) the nature and seriousness of the danger to any person or the community posed by the person's release.

(4) Release Order. A magistrate authorizing the release of a person under Rule 46(a) must:

(A) issue an order containing a statement of the release conditions imposed, if any;

(B) inform the person of the penalties applicable to violations of the release conditions; and

(C) advise the person that a warrant for the person's arrest will be issued immediately upon any violation.

(5) Review of Release Conditions. A person for whom release conditions are imposed who continues to be detained 48 hours after the release hearing because of an inability to meet the conditions may, upon request, have the conditions reviewed by a

magistrate.

(6) Amending Release Conditions. A magistrate ordering the release of a person on any condition specified in a release order may amend the order at any time to impose additional or different conditions of release.

(7) Release Information. Information stated in, or offered in connection with, an order entered under Rule 46(a) need not conform to the North Dakota Rules of Evidence.

(8) Collateral Security. Rule 46(a) does not prevent the disposition of any case or class of cases by forfeiture of collateral security when that disposition is authorized by the court.

(b) Release During Trial. A person released before trial continues on release during trial under the same terms and conditions. But the court may order different terms and conditions or terminate the release if necessary to ensure that the person will be present during trial or that the person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Motion for Release.

(1) Motion to District Court. A person must make any application for release, modification of release conditions, or revocation of release after a notice of appeal from a judgment of conviction has been filed, to the district court before the motion may be made to the supreme court. If the district court refuses release pending appeal, or imposes conditions of release, or revokes release, the court must state in writing the reasons for the action taken.

(2) Motion to Supreme Court. After first making a motion to the district court

under Rule 46(c)(1), a person may make a motion for release, or for modification of the conditions of release, or for revocation of release, pending review to the supreme court or to one of its justices. After reasonable notice to the appellee, the supreme court or one of its justices must decide the motion promptly on the documents, ~~affidavits~~ declarations, and portions of the record the parties present. The supreme court or one of its justices may order the release of the appellant pending disposition of the motion.

(d) Release of Material Witness. A magistrate may issue a warrant for detention of a person if:

(1) it appears by ~~affidavit~~ a declaration that the testimony of the person is material in any criminal proceeding; and

(2) it is shown that it may be impracticable to secure the person's presence by subpoena.

The magistrate may impose release conditions as specified in Rule 46(a) on a detained material witness. A material witness may not be detained because of inability to comply with any release condition if the testimony of the witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable time until the deposition of the witness is taken.

(e) Surety.

(1) Approval. The court must not approve a bond unless the surety appears to be qualified. Every surety, except a legally approved corporate surety, must demonstrate by ~~affidavit~~ a declaration that its assets are adequate. The court may require the ~~affidavit~~

declaration to describe the following:

(A) the property that the surety proposes to use as security;

(B) any encumbrance on that property;

(C) the number and amount of any other undischarged bonds and bail undertakings the surety has issued; and

(D) any other liability of the surety.

(2) Suspension. If a surety fails to make payment on forfeited bail within ninety days, the surety and its agent will be suspended automatically from writing further bonds. The suspension will continue for a period of thirty days from the date the principal amount of the bond is deposited in cash with the clerk of court.

(f) Bail Forfeiture.

(1) Declaration.

(A) The court must declare the bail forfeited if a condition of the bond is breached.

(B) If the court declares bail forfeited, the clerk of court must notify any surety in writing and direct the surety to make payment under the terms of the bond within ninety days of the date of the forfeiture order. The clerk must send a copy of the forfeiture order with the notice.

(2) Setting Aside.

(A) The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if it appears justice does not require bail forfeiture.

(B) Any motion for a bail forfeiture to be set aside must be filed with the clerk of court within ninety days of the date of the order of forfeiture.

(3) Enforcement.

(A) Default and Execution. If it does not set aside a bail forfeiture, the court must, upon the prosecution's motion, enter a default judgment.

(B) Jurisdiction and Service. By entering into a bond, each surety submits to the court's jurisdiction and irrevocably appoints the clerk of court as its agent to receive service of any filings affecting its liability.

(C) Motion to Enforce. The court may, upon the prosecution's motion, enforce the surety's liability without an independent action. The prosecution must serve any motion, and notice as the court prescribes, on the clerk of court. If so served, the clerk must promptly mail or send by third-party commercial carrier a copy to the surety at its last-known address.

(4) Remission. After entering a judgment under Rule 46 (f)(3), the court may remit in whole or in part the judgment under the same conditions specified in Rule 46(f)(2)(A).

(g) Exoneration. The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture. The court must exonerate a surety who deposits cash in the amount of the bond or timely surrenders the defendant into custody.

(h) Supervising Detention Pending Trial. To eliminate unnecessary detention, a court must supervise the detention of defendants it orders held awaiting trial and of persons it orders held as material witnesses.

EXPLANATORY NOTE

Rule 46 was amended, effective March 1, 1986; March 1, 1990; January 1, 1995;

March 1, 1999; March 1, 2003; March 1, 2005; March 1, 2006;_____.

Rule 46 is an adaptation of Fed.R.Crim.P. 46.

Rule 46 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (a) is adapted from the language of the Bail Reform Act of 1966 (P.L. 89-465, 80 Stat. 214), 18 U.S.C. § 3146.

Subdivision (a) was amended, effective January 1, 1995, to make the safety of any other person or the community a relevant consideration when determining which conditions of release will reasonably assure the appearance of a person charged with an offense. Additional conditions of release were added from the Bail Reform Act of 1984, 18 U.S.C. § 3142(c). Paragraph (a)(5) was amended, effective March 1, 2005, to clarify that a magistrate who conducts a review of release conditions need not be the same magistrate who imposed the release conditions. A separate subdivision dealing with review of release conditions was repealed effective March 1, 2005. Under N.D.C.C. § 19-03.1-46 (Bail - Additional Conditions of Release), persons charged with controlled substance offenses may be subject to release conditions in addition to those listed in paragraph (a)(2).

Subdivision(b) follows the federal rule and provides for bail during trial. This provision is consistent with previous North Dakota law.

Subdivision (c) and N.D.R.App.P. 9(b) are derived from Fed.R.App.P. 9(b). These

subdivisions regulate the procedure for release of the defendant when the jurisdiction of the appellate court has attached by virtue of the filing of an appeal from a judgment of conviction. Both subdivision (c) and N.D.R.App.P. 9(b) were amended, effective March 1, 1986, to permit modification or revocation of the release of a defendant who was initially released pending appeal and to clarify that an application for release after a notice of appeal is filed must be made in the first instance in the district court and thereafter in the supreme court. Subdivision(c) and N.D.R.App.P. 9(b) were further amended, effective March 1, 2003. The language and organization were changed to make subdivision (c) and N.D.R.App.P. 9(b) more easily understood.

Subdivision (d) is similar to 18 USC § 3149.

Subdivision(e) follows subdivision (e) of the federal rule.

Paragraph (e)(2) was added, effective March 1, 2006, to provide for automatic suspension of sureties that fail to pay forfeited bail.

Subparagraph(f)(1)(A) follows paragraph(f)(1) of the federal rule and previous North Dakota law and requires that a forfeiture must be declared if there is a breach of bond conditions. The forfeiture provision is designed to discourage violations of bail covenants and to deter defaults which create unnecessary delay and expense to the prosecution.

Subparagraph (f)(1)(B) was added, effective March 1, 2006, to create a mechanism for notifying sureties of bail forfeiture orders.

Subparagraph (f)(2)(A) permits a forfeiture to be excused if justice does not require its enforcement. Subparagraph (f)(2)(B) was added, effective March 1, 2006, to

clarify that requests to excuse may be made by motion and to set a deadline for such motions.

Paragraph(f)(3) follows paragraph (f)(3) of the federal rule and establishes a single procedure through which the court, on motion, can enforce forfeited bail bonds.

Paragraph (f)(3) was amended, effective March 1, 1986, to delete "district" court and make clear that obligors, by entering into bond, subject themselves to the jurisdiction of an appropriate court and appoint the clerk as their agent for service of any documents.

Paragraph (f)(3) was amended, effective March 1, 1999, to allow copies of the motion to be served via commercial carrier as an alternative to mail.

Paragraph (f)(4) follows paragraph(f)(4) of the federal rule. A determination for remission should be made only after judgment of default has been entered.

Subdivision (g) follows subdivision (g) of the federal rule. The provision that the surety may surrender the defendant into custody, whether or not the case has been disposed of, is consistent with previous North Dakota law and avoids a breach and forfeiture when the surety has reason to anticipate that defendant will not appear.

Subdivision (h) follows subdivision (h) of the federal rule.

Rule 46 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5;

September 22-23, 2005, pages 18-20; April 28-29, 2005, pages 8-9; January 29-30, 2004, pages 15-16, 18;September 23-24, 1999, pages 18-19; January 29-30, 1998, page 20; April 28-29, 1994, pages 4-6; January 27-28, 1994, pages 18-23; September 23-24, 1993, pages 21-23; April 20, 1989, page 4;December 3, 1987, page 15; November 29, 1984, page 12; April 26, 1984, pages 11-17 and 21;January 19, 1984, pages 5-9; April 24-26, 1973, pages 14-15; December 11-15, 1972, pages 50-53; November 18-20, 1971, pages 12-22; Fed.R.Crim.P. 46.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-08-04, 29-08-05, 29-08-06, 29-08-07, 29-08-08, 29-08-09, 29-08-10, 29-08-11, 29-08-12, 29-08-13, 29-08-14, 29-08-15, 29-08-17, 29-08-18, 29-08-19, 29-08-20, 29-08-21, 29-08-23, 29-08-24, 29-08-25, 29-12-02, 29-21-34, 29-28-16, 29-28-17, 31-03-21, 31-03-22, 31-03-23, 31-12-10, 33-12-36, 33-12-37, 33-12-38.

CONSIDERED: N.D.C.C. ch. 31-15, §§ 12-01-13, 22-02-09, 29-05-12, 29-05-13, 29-05-14, 29-08-01, 29-08-02, 29-08-03, 29-08-16, 29-08-22, 29-08-26, 29-08-27, 29-21-21, 29-21-23, 29-22-31, 31-03-19, 31-03-20, 31-03-24.

CROSS REFERENCE: N.D.R.App.P. 9 (Release in Criminal Case); N.D.C.C. § 19-03.1-46 (Bail - Additional Conditions of Release).

RULE 47. MOTIONS

(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content. A motion—except when made during a trial or hearing—must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by ~~affidavit~~ declaration.

(c) Timing of a Motion. A party must serve a written motion—other than one that the court may hear ex parte—and any hearing notice at least 21 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon ex parte application.

(d) ~~Affidavit~~ Declaration Supporting a Motion. The moving party must serve any supporting ~~affidavit~~ declaration with the motion. A responding party must serve any opposing ~~affidavit~~ declaration at least one day before the hearing, unless the court permits later service.

EXPLANATORY NOTE

Rule 47 was amended, effective March 1, 2006; March 1, 2011;_____.

Rule 47 is an adaptation of Fed.R.Crim.P. 47. The rule is intended to state the general requirements for all motions. To achieve flexibility, the rule does not require grounds for a motion to be stated with particularity, and the use of ~~affidavits~~ declarations in support of a motion is permissive.

Rule 47 is not intended to permit speaking motions, i.e., a motion supported by

~~affidavit~~ declaration attempting to establish facts which can only be established at a trial or hearing where evidence is introduced.

Rule 45 on calculating time, Rule 49 on service and filing of documents, and N.D.R.Ct. 3.2 relating to submission of motions should be considered when making a motion under this rule.

Subdivision (c) was amended, effective March 1, 2011, to change the time to serve a motion from 18 to 21 days before the hearing date.

Rule 47 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules. In addition, to achieve consistency with the federal rules, the language of subdivisions (c) and (d) was transferred to this rule from Rule 45.

Rule 47 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; April 29-30, 2010, page 20; April 28-29, 2005, page 9; April 24-26, 1973, page 15; February 20-23, 1973, page 8; September 17-19, 1970, page 10; March 12, 1970, page 10; Fed.R.Crim.P. 47.

STATUTES AFFECTED: ~~None~~

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Crim.P. 45 (Computing and Extending Time); N.D.R.Crim.P. 49 (Serving and Filing Documents); N.D.R.Ct. 3.2 (Motions).

RULE 509. IDENTITY OF INFORMER

(a) Rule of Privilege. The United States or a state or subdivision of a state has a privilege to refuse to disclose the identity of an individual who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege under this rule may be claimed by an appropriate representative of the government to which the information was furnished.

(c) Exceptions. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed by a holder of the privilege or by the informer's own action to persons who would have cause to resent the communication or if the informer appears as a witness for the government.

(d) Procedures. If it appears that an informer may be able to give testimony relevant to an issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which the government is a party, and the informed government invokes the privilege, the court must give the government an opportunity to show in chambers facts relevant to determining whether the informer can, in fact, supply the testimony. The showing will ordinarily be by ~~affidavit~~ declaration, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon ~~affidavit~~ declaration. If the court finds there is a reasonable probability that the

informer can give the testimony, and the government elects not to disclose the informer's identity, in criminal cases the court on motion of the defendant or on its own motion must grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of the defendant, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court must be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents may not otherwise be revealed without consent of the informed government. All counsel and parties may be present at every stage of a proceeding under this subdivision except a showing in chambers, if the court has determined that no counsel or party may be present.

(e) Legality of Obtaining Evidence. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, it may require the identity of the informer to be disclosed. The court must, on request of the government, direct that the disclosure be made in chambers. All counsel and parties concerned with the issue of legality must be permitted to be present at every stage of a proceeding under this subdivision except a disclosure in chambers, at which no counsel or party may be present. If disclosure of the identity of the informer is made in chambers, the record must be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents may not otherwise be revealed

without consent of the government.

EXPLANATORY NOTE

Rule 509 was amended, effective March 1, 2014;_____.

Rule 509 is modeled after Rule 509 of the Uniform Rules of Evidence and protects, in certain instances, the identity of one who furnishes information that aids the government in the investigation of violations of the law. The need for a privilege of this nature is clear. As McCormick has stated:

"Informers are shy and timorous folk, whether they are undercover agents of the police or merely citizens stepping forward with information about violations of law, and if their names were subject to be readily revealed, this enormously important aid to law enforcement would be almost cut off." McCormick on Evidence 111 at 236 (2d ed. 1972).

Thus, subdivision (a) grants a privilege that protects the identity of an informer. Although often called the "informer's privilege," the true holder of the privilege is the governmental entity to which the information is furnished. The privilege protects only the identity of the informer and not the informer's communication, except to the extent that protection of the contents of the communication is necessary to preserve the informer's anonymity. 8 Wigmore on Evidence 2374 at 765 (McNaughton rev. 1961).

Invocation of the privilege is most likely to occur in the context of a criminal proceeding, but the privilege is not limited to those proceedings. Prosecutions of civil violations and investigations by legislative bodies may include the use of informers and the possibility of reprisal against them.The privilege is extended to protect the informer's identity in those situations.

Subdivision (b) provides that the privilege may be claimed by "an appropriate representative" of the entity to which the information was given. Normally, this representative will be counsel.However, in cases in which neither the United States nor the State of North Dakota is a party, other representatives should be accepted as proper claimants. See Advisory Committee's Note to Rule 510, Deleted and Superseded Material, Federal Rules of Evidence Pamphlet (West Pub. Co. 1975).

Subdivision (c) lists two instances in which the privilege does not apply. The first is whenever the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those "who would have cause to resent the communication." This language, taken from the landmark opinion of Roviaro v. United States, 353 U.S. 53, 60, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957), is designed to remove the privilege in those cases in which the identity of an informer is already known to those from whom it was to be shielded, and, at the same time, to leave the privilege intact whenever disclosure is otherwise made, e.g., to other enforcement authorities.

Disclosure may be made by the government or by the informer. Allowing the informer, who is not the holder of the privilege, essentially to "waive" its protection is a minor departure from the law of privileges for, normally, only a holder or representative may effect a waiver. The nature of this particular privilege and the practical necessities involved dictate this result; the government could not reasonably restrain an informer's desire to disclose the informer's identity.

The second exception stated in subdivisionn (c) is that the privilege is inapplicable whenever the informer appears as a witness for the government. This exception is of

constitutional origin. A defendant may not be denied his rights to confrontation of witnesses and to due process of law on the basis of an informer's privilege. Smith v. Illinois, 390 U.S. 129, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968).

Subdivision (d) states that the general rule of privilege does not apply whenever it appears that the informer may be able to give testimony relevant to "any issue in a criminal case" or to "a fair determination of a material issue on the merits in a civil case." The doctrine supporting the exception is essentially one of fairness. In each case, or at least in criminal prosecutions, a balancing of the conflicting interests must be made: "The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." Roviaro v. United States, supra, 353 U.S. 62.

In Roviaro, the informer was also a participant in the crime. Since that decision, participation in the crime has been deemed to be a critical factor in the decision of whether disclosure of an informer's identity should be required. See United States v. Clark, 482 F.2d 103 (5th Cir. 1973).See generally, the cases collected in 2 Wright, Federal Practice and Procedure, 406 (1969). An informer's participation in a crime will be a factor to consider under this rule, not in and of itself, but as it bears upon the relevancy and significance of the informer's potential testimony.

If it appears that an informer may be able to give relevant testimony and the

government, when informed of this fact, invokes the privilege, this rule provides the procedure by which the validity of the claim is to be tested. The court must review, in chambers, the facts relevant to determining whether relevant information may be obtainable from the informer. This limited intrusion into what may be privileged material is deemed to be the most equitable manner of balancing the conflicting interests involved. If the court finds that disclosure is in order and the government refuses to reveal the informer's identity, the court, in its discretion, may grant appropriate relief, as delineated in the rule.

Subdivision (e) details the extent of the privilege under this rule when an informer is relied upon to establish the legality of the means by which evidence was obtained. This subdivision was derived from a rule of privilege that was proposed for, but never enacted as part of, the Federal Rules of Evidence.

Rule 509 was amended, effective March 1, 2014, to follow the 1999 amendments to Uniform Rule of Evidence 509. Several occurrences of the term "person" have been replaced with the term "individual," which is intended to mean a human being. The amendments to the rule's terminology are not intended to change any result in any ruling on evidence admissibility.

Rule 509 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; April 25-26, 2013, page 34; January 29, 1976, pages 9, 10. Rule 509, Uniform Rules of Evidence; Proposed Rule 509(c)(3), Federal Rules of Evidence (not enacted).

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

RULE 606. JUROR'S COMPETENCY AS A WITNESS

(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's ~~affidavit~~ declaration or evidence of a juror's statement on these matters.

(2) Exceptions. A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror;

(C) the verdict was arrived at by chance; or

(D) a mistake was made in entering the verdict on the verdict form.

EXPLANATORY NOTE

Rule 606 was amended, effective March 1, 1990, March 1, 2008; March 1, 2014; _____.

Subdivision (a) prohibits a juror from testifying in a case in which that juror is

sitting. Many of the practical and theoretical problems that are present when a judge testifies are also present when a juror does so. The impartiality with which the trier of fact should consider evidence is immeasurably damaged whenever a juror presents evidence for one of the parties to a lawsuit.

Subdivision (b) prohibits a juror from testifying as to the mental processes inherent in arriving at a verdict but allows jurors to testify as to whether outside influences were brought to bear upon a juror, or whether the verdict was arrived at by chance. Subdivision (b) was amended, effective March 1, 2008, to allow juror testimony about mistakes in entering the verdict on the verdict form.

The rationale of this rule is to further free deliberation in the jury room by protecting from disclosure the manner in which a verdict was reached, and to promote finality of verdicts. At the same time considerations must be given to the arrival of a just result in each particular case. Where a verdict is reached because of extraneous, prejudicial information or outside influence, much of the reason for disallowing a juror to testify disappears, and the balance is weighted in favor of obtaining justice in the individual case. Justice also requires disclosure whenever a verdict is arrived at by chance, including a "quotient" verdict, in which the jurors agree in advance to be bound. Although the view has been criticized, it is felt that reaching a verdict by chance is an extreme irregularity which replaces deliberation rather than being a part of it and, as such, should be disclosed.

Rule 606 was amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 606 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.

Rule 606 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Minutes of Joint Procedure Committee of April 24, 2020, pages 4-5; April 26-27, 2012, pages 23-24; September 28-29, 2006, page 16; March 24-25, 1988, page 12; December 3, 1987, page 15; January 29, 1976, page 13; October 1, 1975, page 4. Fed.R.Ev. 606; Rule 606, SBAND proposal.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-21-18, 31-01-10.

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 59 (New Trials ? Amendment of Judgments).

RULE 5. POST-JUDGMENT MEDIATION

(a) Purpose.

(1) The purpose of post-judgment mediation is to improve the lives of families who appear before the courts by trying to resolve disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members.

(2) The objectives of post-judgment mediation are to:

(A) support improved family decision-making and to promote agreement and compromise instead of further litigation and competition;

(B) improve access to mediation by providing funding;

(C) improve post-litigation family problem-solving and communication capacities by reestablishing communication through mediation;

(D) decrease litigation costs for litigants;

(E) create incentives to pursue mediation including flexibility to negotiate critical issues without judicial intervention;

(F) determine best practices for family mediation in North Dakota;

(G) improve rural access to post-litigation mediation services, as well as access by underprivileged and minority persons;

(H) work with the domestic violence services community in order to assess risk and provide services where appropriate; and to ensure proper protections are put in place and mediators are well-trained in signposts, risks, and exit planning strategies;

(I) reduce post-judgment litigation and conflict in family cases; and

(J) help the public, judiciary, and bar become more aware of the benefits and nature of the mediation process.

(b) Program Management. The family mediation program administrator will manage and oversee the operation of the program under the supervision of the Supreme Court.

(c) Research and Evaluation. The program will include evaluation components.

(d) Mediation Process.

(1) Request for Mediation. Any party contemplating an appeal may forward a request for post-judgment mediation to the program administrator no later than 60 days after the service of notice of entry of judgment or order, or seven days after service of the notice of appeal, in any eligible case. The request must be simultaneously served on every party under N.D.R.App.P. 25. The time for filing a notice of appeal under N.D.R.App.P. 4 is not affected by any request or assignment for mediation.

(2) Eligible Cases. Only judgments and orders that are final and appealable to the Supreme Court in the following types of cases are eligible for participation in post-judgment mediation:

(A) divorce cases involving property or spousal support;

(B) any case involving parenting rights, except for termination of parental rights cases;

(C) any case involving residential responsibilities or support of minor children;

(D) any case involving grandparent visitation; and

(E) any case under the Uniform Probate Code or the Uniform Trust Code.

(3) Exemption from Mediation. Any party may request referral of an eligible case to post-judgment mediation. Referral must be granted unless a party requests an order from the court exempting the case from post-judgment mediation by filing a motion and ~~an affidavit~~ a declaration with the clerk of the supreme court within seven days of service of the mediation request. The court may exempt the case if:

(A) the issues raised are limited to a question of law; or

(B) prior post-judgment mediation has been attempted and the issues are substantially similar; or

(C) other good cause is shown.

(4) Exclusion from Mediation. The program administrator may not refer proceedings where a current domestic violence protection order or other order for protection between the parties exists. In these cases, the court may not proceed with mediation except in unusual cases where:

(A) mediation is requested by the victim of the domestic violence or sexual abuse, and an exception to the order of protection is made by the court;

(B) the mediation is provided by a mediator trained to address the needs and safety of victims where domestic violence is at issue;

(C) the victim of domestic violence is provided the opportunity for separate meetings during the mediation, and to mediate using separate rooms;

(D) the mediation takes place in a courthouse or other building where security measures are in place; and

(E) the victim has an attorney or other advocate or support person of their choice in the mediation.

The Rule 5 (d)(4) exclusion and exceptions are intended to comply with the N.D.C.C. § 14-09.1-02 standards for family mediation.

(5) Screening and Assignment of Mediator. On receipt of a request for post-judgment mediation, the program administrator must determine whether a case meets the requirements for eligibility and appropriateness for mediation. Once a case has been approved for post-judgment mediation, the program administrator must assign a mediator eligible under Rule 5(e). The program administrator must send a notice of mediation to counsel, any unrepresented party, and the clerk of the supreme court. The notice of mediation must identify the mediator who has been assigned, and a deadline for completion of the mediation. The mediation must be completed within 45 days of the assignment of a post-judgment mediator.

(6) Ordering of Transcript and Filing of Briefs. To expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in cases assigned for mediation is extended to 21 days after the filing of the notice of appeal. The time for filing briefs is not automatically tolled pending mediation. In cases in which mediation has been requested, any motions for enlargement of time for briefs must be filed with the clerk of the supreme court under Rule 26(b).

(7) Mediation Orientation. The post-judgment mediation program will provide up to six hours of combined pre-mediation orientations and mediation. Mediators will be compensated at a rate set annually by the state court administrator. The post-judgment

mediation program requires the parties to individually attend a pre-mediation orientation and screening with a designated mediator, and at least one joint mediation session. The program will provide up to six hours of mediation without charge to the parties. Should the parties require additional sessions, they may purchase mediation from the mediator. Parties may also apply to the program administrator for additional mediation sessions and may apply for a fee waiver or sliding scale fee should they qualify based on economic factors. The program administrator will determine whether a party is eligible for a fee waiver or fee reduction based on party income according to a schedule adopted by the Supreme Court. If the parties qualify for a fee reduction and have been approved for additional mediation, any "gap" between the set rate and their ability to pay will be paid to the mediator by the court under this program.

(8) Mediation Statement. On request of the mediator, the parties should each supply to the mediator, at least two days before the scheduled conference, a mediation statement no more than four pages in length. The statement should include:

(A) a brief history of the litigation;

(B) a brief statement of facts;

(C) the history of any efforts to settle the case, including any offers or demands;

(D) a summary of the parties' legal positions;

(E) the present posture of the case, including any related litigation; and

(F) any proposals for settlement.

The mediation statement may not be filed in the office of the clerk of the supreme court. Mediation by telephone or other electronic means may be used if all parties and the

mediator agree.

(e) Selection of Mediators.

(1) Eligibility. Any lawyer qualified as a post-judgment mediator under N.D.R.Ct. 8.9 may apply to be added to the roster of post-judgment mediators and will be approved by the program administrator. Mediators must carry malpractice insurance that covers their mediation practice.

(2) Mediation Assignment. Mediators will be assigned cases by the program administrator and will manage cases assigned to them from orientation and screening through conclusion of mediation.

(3) Conflicts of Interest and Bias. A mediator may not be removed unless the mediator and/or the parties' petition the program administrator based on bias or conflicts of interest. Parties and attorneys may not request a change of mediator unless they present clear evidence of bias or conflict of interest.

(f) Mediation Outcome. Within seven days after completion of the mediation decision summary in appeals settled in whole or in part under Rule 5, the parties must file a copy of the decision summary and a request for the Supreme Court to take appropriate action, such as dismissal of the appeal under Rule 43 or remand to the district court. If a matter is remanded, the parties must file the appropriate documents with the district court to obtain an amended judgment, which must incorporate all terms of the decision summary. On entry of an amended judgment, the parties must request the Supreme Court to enter an appropriate order. In appeals not settled and terminated from mediation, briefing and oral argument will proceed under the rules. In cases settled by post-judgment

mediation prior to the filing of a notice of appeal, the requesting party is responsible for obtaining an amended judgment incorporating all terms of the decision summary from the district court.

(g) Closing.

(1) Mediation Decision Summary. At the close of every mediation case, the mediator and parties must create a written decision summary for the parties that notes any and all agreements made and uses the parties' own language. The parties will have seven days to reconsider the decisions made in mediation. If neither party files a written request to reconsider within seven days, the mediator must immediately send a copy of the decision summary to the parties and their attorneys, along with the Mediation Case Closing Form. (N.D.R.Ct. Appendix I, Form G).

(2) Evaluation. At the close of every mediation case, the mediator and the parties must complete the required evaluation forms and the mediator must submit those to the program administrator along with closing form, and the mediator's invoice form. The mediator is responsible for collecting fees from the parties if appropriate.

(3) Case Closing/Notification. The mediator must notify program administrator when a mediation case has concluded for any reason, and offer the following reasons:

(A) agreement has been reached in whole or part; or

(B) the parties were unable to reach agreement.

(h) Confidentiality. Statements and comments made during mediation conferences and in related discussions, and any record of those statements, are confidential and may not be disclosed by anyone (including the program administrator, counsel, or the parties;

and their agents or employees) to anyone not participating in the post-judgment mediation process. Mediators may not be called as witnesses, and the information and records of the program administrator may not be disclosed to judges, staff, or employees of any court.

EXPLANATORY NOTE

Rule 5 was adopted, effective January 1, 2014; amended effective Oct 1, 2014; March 1, 2017;_____.

Rule 5 was amended, effective Oct 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court" and "paper" with "document."

Rule 5 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

Paragraph (d)(2) was amended, effective March 1, 2017, to clarify that Supreme Court judgments are not eligible for post-judgment mediation.

Sources: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 24-25, 2016, page 24; January 31-February 1, 2013, pages 5-10; Joint Alternative Dispute Resolution Committee Minutes of June 25, 2012; October 25, 2011; September 7, 2011; June 29, 2011; June 10, 2011; December 9, 2010.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15, § 14-09.1-02.

CROSS REFERENCE: N.D.R.App.P. 26 (Computing and Extending Time),

N.D.R.App.P. 43 (Substitution of Parties); N.D.R.Ct. 8.1 (Family Mediation Program), N.D.R.Ct. 8.9 (Roster of Alternative Dispute Resolution Neutrals).

RULE 8. STAY OR INJUNCTION PENDING APPEAL

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal.

(B) approval of a supersedeas bond.

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Supreme Court; Conditions on Relief. A motion for the relief mentioned in paragraph (a) (1) may be made to the supreme court or to one of its justices.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on.

(ii) originals or copies of ~~affidavits~~ declarations or other sworn statements supporting facts subject to dispute.

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under paragraph (a) (2) must be filed with the clerk of the supreme court and normally will be considered by the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single justice.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceeding Against a Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the clerk of district court as the surety's agent on whom any documents affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice the district court prescribes may be filed with the clerk of district court, who must promptly mail or send by third-party commercial carrier a copy to each surety whose address is known.

(c) Stay in a Criminal Case. Rule 38(a) of the North Dakota Rules of Criminal Procedure governs a stay in a criminal case.

EXPLANATORY NOTE

Rule 8 was amended, effective January 1, 1988; March 1, 1999; March 1, 2003; October 1, 2014;_____.

Rule 8 provides the procedure for obtaining a stay or similar relief with respect to the action of the court, pending appeal.

Subdivision (b) was amended, effective March 1, 1999, to allow copies of the motion to be sent via a commercial carrier as an alternative to mail.

Subdivision (c) assures the procedure for a stay in a criminal matter is consistent with N. D. R. Crim. P. 38.

The authority of a single justice to act on procedural matters is first mentioned in this rule. This rule contemplates that many applications for procedural relief may be handled by a single justice, with substantial savings in time and reduction of the actions requiring a quorum of the court.

Rule 8 was amended, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 8. 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 8 was amended, effective October 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court" and "paper" with "document."

Rule 8 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 23-24, 1999, page 18; January 29-30, 1998, page 21; February 19-20, 1987, pages 5-6; September 18-19, 1986, pages 13-14; May 25-26, 1978, page 5; March 16-17,

1978, page 16. Fed.R.App.P. 8.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 28-27-22.

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.App.P. 7 (Bond for Costs on Appeal in Civil Cases) and N.D.R.App.P. 9 (Release in Criminal Cases). N.D.R.Crim.P. 38 (Stay of Execution and Relief Pending Appeal).

RULE 9. RELEASE IN CRIMINAL CASES

(a) Motion to District Court. Any motion for release, modification of the conditions of release, or revocation of release after a notice of appeal from a judgment of conviction has been filed must first be made to the district court before the motion may be made to the supreme court. If the district court refuses release pending appeal, or imposes conditions of release, or revokes release the court must state in writing the reasons for the action taken.

(b) Motion to Supreme Court. After having first been made to the district court, a motion for release, or for modification of the conditions of release, or for revocation of release pending review may be made to the supreme court or to one of its justices. After reasonable notice to the appellee, the motion must be determined promptly upon such documents, ~~affidavits~~ declarations, and portions of the record as the parties present. The court or one of its justices may order the release of the appellant pending disposition of the motion.

EXPLANATORY NOTE

Rule 9 was amended, effective March 1, 1986; March 1, 2003; October 1, 2014;_____.

This rule incorporates a procedure for release pending appeal in a criminal case but omits the federal procedure in Fed.R.App.P. 9 for appeal of an order refusing pre-conviction release, because there is no authority or precedent for these appeals under North Dakota practice.

This rule and N. D. R. Crim. P. 46(c) are identical. This rule regulates the procedure for release of a defendant when the jurisdiction of the appellate court has attached by virtue of the filing of an appeal from a judgment of conviction.

This rule was amended, effective March 1, 1986, to permit modification or revocation of the release of a defendant who was initially released pending appeal, and to clarify that a motion for release after a notice of appeal is filed must be made in the first instance in the trial court and thereafter in the supreme court.

Rule 9 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.

Rule 9 was amended, effective October 1, 2014, to replace "paper" with "document."

Rule 9 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 23-24, 1999, pages 18-19; November 29, 1984, pages 14-15; April 26, 1984, pages 11-17; May 25-26, 1978, pages 6-7.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

45 CROSS REFERENCE: N.D.R.Crim.P. 46 (Release from Custody).

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~~ declarations, 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.

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

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

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

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

EXPLANATORY NOTE

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

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

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

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

A petition for a supervisory writ is not an alternative to an appeal. The supreme court will issue a supervisory writ only to rectify errors and prevent injustice when no adequate alternative remedy exists. This rule does not limit the supreme court's authority

to exercise its supervisory power.

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

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

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

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

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

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

Rule 21 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 26, 2013, page 22; April 24-25, 2003, page 14; January 30-31, 2003, pages 16-18.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

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

RULE 25. FILING AND SERVICE

(a) Filing.

(1) Filing with the Clerk. A document required or permitted to be filed in the supreme court must be filed with the clerk of the supreme court.

(2) Filing: Method and Timeliness.

(A) In general. Filing may be accomplished by mail or delivery addressed to the clerk or by electronic means as provided in these rules, but filing is not timely unless the clerk receives the documents within the time fixed for filing. If a document submitted for filing is rejected, the time for filing is tolled from the time of submission to the time the rejection notice is sent. A corrected document will be considered timely filed if submitted and served within three days after the notice of rejection is sent.

(B) Brief, appendix, transcript or petition for rehearing. A brief, appendix, transcript, or petition for rehearing is considered filed on the day of electronic filing, or mailing or deposit with a third-party commercial carrier.

(C) Electronic filing. Documents must be filed by electronic means to the extent provided and under procedures established in these rules. Self-represented litigants and prisoners are exempt from the electronic filing requirement and may file paper documents in person, by mail, or by third party commercial carrier. A document filed by electronic means in compliance with these rules constitutes a written document for the purpose of applying these rules.

(i) Documents, except an appendix, may be filed electronically with the clerk of

the supreme court by facsimile only if e-mail submission is not possible.

(ii) The typed attorney or party name or facsimile signature on a document filed electronically has the same effect as an original manually affixed signature.

(iii) A document in compliance with these rules and submitted electronically to the clerk of the supreme court by 11:59 p.m. Bismarck, North Dakota, time is considered filed on the date submitted. Upon receiving an electronic document, the clerk of the supreme court will issue an e-mail confirmation that the document has been received.

(iv) A party filing a document electronically must pay a surcharge for internal reproduction of the document by the supreme court if the party files a motion in excess of 20 pages in length -- including attachments, exhibits or appendices -- or an appendix in excess of 100 pages in length. The surcharge is $ 0.50 per page for each page in excess of the limit.

(3) Electronic Document Formats. All documents submitted to the court in electronic form must be in approved word processing format or portable document format (PDF). Documents filed in PDF format must be directly converted from a word processing file, rather than scanned if possible. Documents or parts of documents not available in electronic form may be converted to PDF from scanned images. To the extent practicable, PDF documents converted from scanned images should be text-searchable. Electronically filed documents may not be locked, password protected, or contain embedded files or scripts.

(A) Approved word processing formats for documents submitted in electronic form are WordPerfect, Word, and ASCII. Parties must obtain permission from the clerk

of the supreme court in advance if they seek to submit documents in another word processing format.

(B) Hard page breaks must separate the cover, table of contents, table of cases, and body of approved word processing format briefs.

(C) An appendix may be filed electronically in portable document format (~~.pdf~~ PDF). Except for limited excerpts showing a court's reasoning, district court transcripts that have been filed electronically with the supreme court may not be included in an appendix filed electronically.

(4) Filing Motion with Justice. If a motion requests relief that may be granted by a single justice, the justice may receive the motion for filing; the justice must note the filing date on the motion and give it to the clerk.

(5) Filing with the Clerk. Any document filed with the clerk of the supreme court by e-mail by the district court or counsel must be sent to the following e-mail address: supclerkofcourt@ndcourts.gov.

(b) Service of All Documents Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a document, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel. In a criminal appeal in which a motion to dismiss the appeal is filed, service must be made on the individual criminal defendant and all counsel.

(c) Manner of Service.

(1) Service may be any of the following:

(A) personal, including delivery to a clerk or a responsible person at the office of

counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within three days; or

(D) by electronic means.

(2) When reasonable, considering such factors as the immediacy of the relief sought, distance and cost, service on a party must be by a manner at least as expeditious as the manner used to file the document with the court. If a party files a document by electronic means, the party must serve the document by electronic means unless the recipient of service cannot accept electronic service.

(3) Service by mail is complete upon mailing. Service via a third-party commercial carrier is complete upon deposit of the document to be served with the commercial carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the document was not received by the party served.

(4) Electronic Service.

(A) All documents filed electronically must be served electronically except paper documents must be served when a self-represented litigant or prisoner cannot accept electronic service.

(B) Attorneys appearing before or filing with the supreme court must provide an e-mail address to the court and must accept electronic service. Attorneys may designate a law firm e-mail address as their e-mail address for the purpose of accepting electronic service. If the recipient's e-mail address is published on the supreme court's website or known to a party, the document must be served by electronic means to that e-mail

address.

(C) Documents served electronically may be served by facsimile only if e-mail service is not possible and only if prior permission to serve by facsimile is granted by the recipient.

(D) If a recipient cannot accept electronic service of a document, service under another means specified by N.D.R.App.P. 25(c) is required.

(d) Proof of Service. A document presented for filing must contain an acknowledgment of service by the person served or proof of service by the person who made service. Proof of service may appear on or be affixed to the document filed. The clerk may permit a document to be filed without acknowledgment or proof of service but must require acknowledgment or proof of service to be filed promptly.

EXPLANATORY NOTE

Rule 25 was amended, effective January 1, 1988; on an emergency basis, September 5, 1990; on an emergency basis, November 16, 1994; March 1, 1996; March 1, 1999; March 1, 2003; March 1, 2008; March 1, 2011; October 1, 2014; March 1, 2019; _____.

This rule is derived from Fed.R.App.P. 25. Rule 25 was amended, effective March 1, 1999, to allow the use of a third-party commercial carrier as an alternative to the Postal Service. The phrase "commercial carrier" is not intended to encompass electronic delivery services.

Subdivision (a) provides documents are not considered filed until they are received by the clerk of the supreme court. Briefs, appendices, transcripts, and petitions for

rehearing are exceptions to this general rule.

Subparagraph (a)(2)(C), effective March 1, 2003, allows the court to accept documents filed by electronic means.

Subparagraph (a)(2)(C) was amended, effective March 1, 2019, to require electronic filing by all parties other than self-represented litigants and prisoners and to eliminate fees that applied specifically to electronic filing.

Paragraph (a)(3) was amended, effective March 1, 2019, to add requirements for documents filed electronically.

Subdivisions (a) and (c) were amended, effective October 1, 2014, to incorporate N.D. Sup. Ct. Admin. Order 14 and to conform the rule to electronic filing. N.D. Sup. Ct. Admin. Order 14 was repealed, effective October 1, 2014.

Subdivision (b) was amended, effective _____ ____, to require that, in a criminal appeal in which a motion to dismiss the appeal is filed, service must be made on the individual criminal defendant and all counsel.

Subdivision (c) was amended, effective March 1, 2008, to provide for service by electronic means.

Subparagraph (c)(1)(C) was amended, effective March 1, 2011, to change the reference from "calendar days" to "days."

Subparagraph (c)(4)(A) was amended, effective March 1, 2019, to require electronic service of documents filed electronically except when a self-represented litigant or prisoner cannot accept electronic service.

Subdivision (d) allows proof of service by admission of service, ~~affidavit~~

declaration of service, or certificate of an attorney.

Rule 25 was amended, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed. R. App. P. 25. 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 25 was amended, effective October 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court" and "paper" with "document."

SOURCES: Joint Procedure Committee Minutes of September 26, 2019, pages 15-16; April 26, 2019, pages 20-22; April 27, 2018, pages 2-4; January 25, 2018, pages 11-12; September 26, 2013, page 22-24; April 29-30, 2010, page 20; January 25, 2007, page 17;April 25-26, 2002, pages 3-5; April 26-27, 2001, page 10; April 30-May 1, 1998, page 3; January 29-30, 1998, page 21; January 26-27, 1995, pages 6-7; September 29-30, 1994, page 12; February 19-20, 1987, pages 6-7; September 18-19, 1986, pages 14-15; May 25-26, 1978, page 10; March 16-17, 1978, pages 3-4. Fed.R.App.P. 25.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 28-27-05.

CROSS REFERENCE: N.D.R.App.P. 10 (The Record on Appeal); N.D.R.App.P. 26(c) (Computing and Extending Time).

RULE 27. MOTIONS

(a) Content of Motions. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief must be made by filing a motion for the order or relief with proof of service on all other parties. The motion must:

(1) contain or be accompanied by any matter required by a specific provision of these rules governing that motion;

(2) state with particularity the grounds on which it is based; and

(3) set forth the order or relief sought.

If a motion is supported by briefs, ~~affidavits~~ declarations, or other documents, they must be served and filed with the motion.

(b) Response to Motion. Any party may file a response in opposition to a motion other than one for a procedural order (see subdivision (c)) within 14 days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice. The court may shorten or extend the time for responding to any motion.

(c) Determination of Motions for Procedural Orders. Notwithstanding the provisions of subdivision (b) , the court may act upon motions for procedural orders, including any motion under Rule 26(b) , without awaiting a response. Any party adversely affected by action on the motion may request reconsideration, vacation, or modification of the action.

(d) Power of a Single Justice to Entertain Motions. In addition to the authority

expressly conferred by these rules or by law, a single justice of the court may entertain and grant or deny any request for relief which may properly be sought by motion under these rules, with the following exceptions:

(1) a single justice may not dismiss or otherwise determine an appeal or other proceeding; and

(2) the court may provide by order or rule that any motion or class of motions must be acted upon by the court.

The action of a single justice may be reviewed by the court.

(e) Form of Documents; Number of Copies. The form of all documents relating to motions must comply with the requirements of Rule 25, if applicable, and Rule 32. If filed by mail or third-party commercial carrier, seven copies of all documents relating to motions must be filed with the original, but the court may require that additional copies be furnished. One electronic copy of all documents relating to a motion must be filed if the motion is filed electronically.

(f) Motion to Dismiss Based on Ground Appeal Not Authorized by Law. Unless otherwise ordered by the court, the filing of a motion to dismiss based on the ground that the appeal is not authorized by law tolls the time for filing briefs on the merits. If the motion is denied, the running of the time for filing briefs on the merits resumes upon notice of entry of the order.

EXPLANATORY NOTE

Rule 27 was amended, effective March 1, 1986; March 1, 2003; March 1, 2011; October 1, 2014;_____.

This rule is taken from Fed.R.App.P. 27. It contemplates that most procedural matters will be determined by a single justice of the court.

~~Rule 27 was revised, effective March 1, 2003. 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.~~

Subdivision (b) was amended, effective March 1, 2011, to increase the time for a party to respond to a motion from 10 to 14 days.

Subdivision (e) was amended, effective October 1, 2014, to conform the rule to electronic filing.

Subdivision (f) was adopted, effective March 1, 1986.

Rule 27 was revised, effective March 1, 2003. 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 27 was amended, effective October 1, 2014, to replace "paper" with "document."

Rule 27 was amended, effective _____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Supreme Court Conference Minutes of September 10, 1985. Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 26, 2013, page

24-25; April 29-30, 2010, page 20;November 29, 1984, page 2; May 25-26, 1978, pages 12-13. Fed.R.App.P. 27.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §29-28-20.

CONSIDERED; N.D.C.C. ch. 31-15.

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

RULE 34. ORAL ARGUMENT

(a) Request for Oral Argument.

(1) Oral argument generally will be scheduled unless:

(a) a party has failed to file a timely brief;

(b) a party has challenged the sufficiency of the findings of fact or the adequacy of the evidence supporting a finding of fact but has failed to provide the court with the related transcripts;

(c) no request for oral argument has been made by any party as required by Rule 28(h);

(d) the parties have agreed to waive oral argument; or

(e) the court, in the exercise of its discretion, determines oral argument is unnecessary.

(2) Participation in Oral Argument. If the court grants a request for oral argument, any party submitting a timely brief will be allowed to participate in oral argument.

(3) Notice. The clerk of the supreme court must advise all parties whether oral argument will be scheduled and, if so, the date, time, and place for argument.

(b) Time Allowed for Argument; Postponement. Regardless of the number of counsel on each side, the appellant will be allowed 30 minutes and the appellee will be allowed 20 minutes to present argument. Arguments on motions will be granted only in extraordinary circumstances. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date. A party is not obliged

to use all of the time allowed, and the court may terminate the argument at any time.

(c) Order and Content of Argument. The appellant opens and may reserve time to conclude the argument. The opening argument may include a fair statement of the case. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Parties should not duplicate arguments.

(e) Nonappearance of a Party. If oral argument is scheduled and the appellee fails to appear, the court must hear appellant's argument. If the appellant fails to appear the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. If no oral argument is scheduled under Rule 34(a)(1), the case will be submitted to the court on the briefs, unless the court directs otherwise.

EXPLANATORY NOTE

Rule 34 was amended, effective July 1, 1981; January 1, 1988; March 1, 1994; March 1, 1997; March 1, 2003; October 1, 2014; March 1, 2019;_____.

Under subdivision (b), in the case of multiple appellants or appellees, each side must divide the time accorded unless additional time has been requested and granted. The omission of subdivision (g) of the Federal Rule is not intended to prevent the use of any exhibits at oral argument.

Rule 34 was revised, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 34. 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.

Subdivision (a) was amended, effective March 1, 2003, to make clear that the court has discretion to determine whether oral argument should or should not be permitted.

Subdivision (a) was amended, effective March 1, 2019, to outline when oral argument will or will not be scheduled.

Subdivision (a) was amended, effective_____, to clarify that if the court grants a request for oral argument, any party submitting a timely brief will be allowed to participate in oral argument.

Rule 34 was amended, effective October 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court."

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, pages 25-27; April 25-26, 2002, pages 12-13; January 24-25, 2002, pages 19-21; September 28-29, 1995, page 13; January 28-29, 1993, page 11; February 19-20, 1987, page 8; September 18-19, 1986, pages 20-21; April 26, 1984, page 30; January 12-13, 1978, pages 22-23. Fed.R.App.P. 34.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 28-31-04, 28-31-05, 29-28-23, 29-28-24, and 29-28-25.

CROSS REFERENCE: N.D.R.App.P. 28~~(h) (Cross-Appeals)~~ (Briefs).

RULE 35. SCOPE OF REVIEW

(a) Civil Appeals.

(1) Power of Court on Appeal. Upon an appeal from a judgment or order, the court may reverse, affirm, or modify the judgment or order as to any party. If the appeal is from a part of the judgment or order, the court may reverse, affirm, or modify that part of the judgment or order.

(2) Intermediate Orders. Upon an appeal from a judgment, the court may review any intermediate order or ruling which involves the merits and affects the judgment appearing upon the record.

(3) Order for New Trial or Determination of Issue. The court may order a new trial of the case or of an issue or issues. If an issue or issues have not been tried or, if tried, not determined, the court may remand the case to the district court for a determination of the issue or issues, without relinquishing jurisdiction of the appeal. The court may defer determination of the appeal until the issue or issues have been determined and certified to the court by the district court. The proceedings and the determination of the district court, upon remand, are deemed to be part of the record on appeal. Within 14 days of the district court's decision on remand, a party may request in writing supplemental briefing or oral argument providing details of the specific additional submissions or proceedings the party believes would be useful to the court.

(4) Judgment or Decision of Court. The court must remit its final judgment or decision to the district court from which the appeal was taken to be enforced accordingly.

If the appeal was from a judgment, the district court must enter final judgment in accordance with the court's judgment or decision, unless the court orders otherwise.

(b) Criminal Appeals.

(1) Power of Court on Review. Upon an appeal from a verdict, judgment, or order, the court may reverse, affirm, or modify the verdict, judgment, or order, and may do any of the following:

(A) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the verdict, judgment, or order;

(B) order a new trial;

(C) remand the case, with proper instructions and its opinion, to the district court.

(2) Intermediate Orders. Upon an appeal from a verdict, judgment, or order, the court may review any intermediate order or ruling which involves the merits or which may have affected the verdict or the judgment adversely to the appellant.

EXPLANATORY NOTE

Rule 35 was amended, effective March 1, 2003;_____.

Rule 35 incorporates in these rules statutes relating to the scope of review by the Supreme Court in civil and criminal cases, all of which have been superseded.

Rule 35 was amended, effective March 1, 2003. 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.

Paragraph (a)(3) was amended, effective_____, to require a party seeking addition briefing or oral argument after a remand to district court to make a

specific request to the court.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 5-8; April 25-26, 2002, pages 17-18; May 25-26, 1978, page 18; March 16-17, 1978, pages 5-6; January 12-13, 1978, page 24, N.D.C.C. §§ 28-27-28, 28-27-29, 29-28-27, and 29-28-28, N.D.C.C.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 28-27-28, 28-27-29, 29-28-27, 29-28-28, 29-28-29, and 28-27-31.

CROSS REFERENCE: N.D.R.Civ.P. 52(a) (Findings by the Court).

RULE 3.2 MOTIONS

(a) Submission of Motion.

(1) Notice. Notice must be served and filed with a motion. The notice must indicate ~~the time of oral argument, or that the motion will be decided on briefs unless oral argument is timely requested~~ one of the following:

(A) the party requests the court decide the motion on the briefs and supporting papers;

(B) the date, time and location of oral argument as provided by the court; or

(C) the party requests the court schedule the time and date for oral argument.

(2) Briefs. Upon serving and filing a motion, the moving party must serve and file a brief and other supporting papers and the opposing party must have 14 days after service of a brief within which to serve and file ~~an answer~~ a response brief and other supporting papers. The moving party may serve and file a reply brief within seven days after service of the ~~answer~~ response brief. Upon ~~the filing of briefs, or upon~~ expiration of the time for ~~filing~~ requesting oral argument or an evidentiary hearing, the motion is considered submitted to the court unless ~~counsel for any party requests oral~~ an oral argument ~~on the motion~~ or an evidentiary hearing has been requested.

(3) Requesting oral argument.

(A) If any party who has timely served and filed a brief requests oral argument, the request must be granted. A timely request for oral argument must be granted even if the

moving party has previously served notice indicating that the motion is to be decided on briefs. The party requesting oral argument ~~must~~ may secure a time for the argument and serve notice upon all other parties or may request that the court set a time for argument and provide notice to the parties.

(B) Requests for oral argument ~~or the taking of evidence~~ must be made ~~not~~ no later than seven days after expiration of the time for filing the ~~answer brief~~ briefs. ~~If the party requesting oral argument fails within 14 days of the request to secure a time for the argument, the request is waived and the matter is considered submitted for decision on the briefs.~~ The court may require oral argument on any motion. ~~If an evidentiary hearing is requested in a civil action, notice must be served at least 21 days before the time specified for the hearing.~~

(4) Requesting Evidentiary Hearing.

(A) A party requesting an evidentiary hearing must provide notice of the request, include a short statement explaining why an evidentiary hearing is necessary, and state the length of time requested.

(B) Requests for an evidentiary hearing must be made no later than seven days after expiration of the time for filing the briefs.

(C) If the court decides an evidentiary hearing is required, it must schedule and notice the hearing. In a civil action, notice must be served at least 21 days prior to the hearing, unless otherwise authorized by statute, rule or court order.

(D) If the court denies a request for an evidentiary hearing, the court must schedule and notice a time and date for oral argument.

(b) Court hearing. ~~The court may hear oral argument on any motion.~~ If permitted by the court, a hearing may be held using contemporaneous audio or audiovisual transmission by reliable electronic means. ~~After reviewing the parties' submissions, the court may require oral argument and may allow or require evidence on a motion.~~

(c) Failure to File Briefs. Failure to file a brief by the moving party may be deemed an admission that, in the opinion of party or counsel, the motion is without merit. Failure to file a brief by the opposing party may be deemed an admission that, in the opinion of party or counsel, the motion is meritorious. Even if ~~an answer~~ a response brief is not filed, the moving party must still demonstrate to the court that it is entitled to the relief requested.

(d) Extension of Time. Extensions of time for filing briefs and other supporting papers, or for continuance of the hearing on a motion, may be granted only by written order of court. All requests for extension of time or continuance, whether written or oral, must be accompanied by an appropriate order form.

(e) Time Limit for Filing Motion. Except for good cause shown, a motion must be filed in such time that it may be heard not later than the date set for pretrial of the case.

(f) Application of Rule.

(1) Conflicting rules. This rule does not apply to the extent it conflicts with another rule adopted by the Supreme Court.

(2) Probate code. This rule applies to formal proceedings under Uniform Probate Code.

EXPLANATORY NOTE

Rule 3.2 was amended, effective September 1, 1983; March 1, 1986; January 1, 1988; March 1, 1990; January 1, 1995; March 1, 1997; March 1, 2002; March 1, 2005; March 1, 2007; March 1, 2011; March 1, 2016;_____.

Subdivision (a) was amended, effective March 1, 1990, to provide that the request for oral argument on the motion must be granted when the party requesting oral argument has timely served and filed a brief.

Subdivision (a) was amended, effective January 1, 1995, to provide that a written motion must be noticed, and that the notice must indicate that oral argument has been requested or that the motion will be decided on briefs unless oral argument is requested. In addition, the amendment shortened the time between the date a motion is filed and the date a motion may be heard by eliminating the five-day period within which the moving party's brief could be filed.

Although the rule contemplates filing a brief with every motion, what constitutes a brief should be liberally construed.

Paragraph (a)(1) was amended, effective_____, to provide details on information required in the notice of motion.

Paragraph (a)(2) was amended, effective March 1, 2011, to increase the time for an opposing party to serve and file an answer brief from 10 to 14 days after service of the moving party's brief. The time for a moving party to serve and file a reply brief was increased from five to seven days after expiration of the time for filing the answer brief. Paragraph (a)(3) was amended to increase the time to request oral argument from five to seven days after expiration of the time for filing the answer brief.

Paragraph (a)(3) was amended, effective March 1, 2016, to require a party requesting oral argument to secure a time for the argument within 14 days of the request. Otherwise, the request will be waived and the matter considered on the briefs. In addition, language was added to the rule requiring 21 days notice to be given if an evidentiary hearing is requested in a civil action.

Paragraph (a)(3) was amended, effective_____, to clarify the procedure for requesting oral argument.

Paragraph (a)(4) was added, effective_____, to provide a detailed procedure for requesting an evidentiary hearing.

Subdivision (b) was amended, effective March 1, 2007, to expand hearing options to include hearing by interactive television and to add a requirement that the court review the parties' submissions before it orders oral argument or testimony.

Subdivision (b) was amended, March 1, 2016, to allow hearings to be conducted using contemporaneous audio or audiovisual transmission by reliable electronic means. N.D. Sup. Ct. Admin. R. 52 governs electronic means hearings.

Paragraph (f)(1) was added, effective March 1, 1997, to clarify that, in the case of a conflict between this rule and any other supreme court rule, the other rule will govern. For example, N.D.R.Civ.P. 56 allows parties 30 days to respond to a summary judgment motion, which conflicts with the 14 day response period specified in subdivision (a) of this rule. Under subdivision (e), the N.D.R.Civ.P. 56 response period would prevail.

Paragraph (f)(2) was added, effective March 1, 2007, to specify that this rule applies to formal proceedings under the Uniform Probate Code. N.D.C.C. §

30.1-01-06(19) defines "formal proceedings" as "proceedings conducted before a judge with notice to interested persons."

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 3-4; January 30, 2020, pages 13-24; September 26, 2019, pages 16-19; April 26, 2019, pages 27-28; April 23-24, 2015, page 6; January 29-30, 2015, pages 19-21; April 29-30, 2010, page 21; April 27-28, 2006, pages 7-9, 17-19; January 26, 2006, pages 12-13; April 29-20, 2004, pages 25-26; September 28-29, 2000, page 13; April 25, 1996, pages 8-11; January 25-26, 1996, pages 10-16; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 13-16; April 29-30, 1993, pages 20-22; April 20, 1989, pages 10-15; March 24-25, 1988, pages 7-10 and 13-15; December 3, 1987, pages 4-5; February 19-20, 1987, pages 21-22; June 22, 1984, page 30; April 26, 1984, pages 17-19.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 30.1.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers); N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 7(Pleadings Allowed—Form of Motions); N.D.R.Civ.P. 56 (Summary Judgment); N.D.R.Crim.P. 45 (Time); N.D.R.Crim.P. 47 (Motions); N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.App.P. 27(Motions); N.D.R.App.P. 34 (Oral Argument); N.D. Sup. Ct. Admin. R. 52 (Contemporaneous Transmission by Reliable Electronic Means).

RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings.

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

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

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

(C) the minor's initials; and

(D) the last four digits of the financial-account number.

(2) Victim Information. If a victim requests, all victim contact information must be redacted from documents to be filed with the court in a criminal or delinquency case.

(b) Responsibility of Party or Nonparty to Redact. A party or nonparty making a filing with the court is solely responsible for ensuring that protected information does not appear on the filing.

(c) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

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

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

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

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

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

(6) an arrest or search warrant;

(7) a charging document and ~~an affidavit~~ a declaration filed in support of a charging document;

(8) the name of an individual known to be a minor when the minor is a party, and there is no statute, regulation or rule mandating nondisclosure; and

(9) a defendant's date of birth in a court filing that is related to criminal matters, non-criminal motor vehicle and game and fish matters, and infractions.

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

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

(1) require redaction of additional information; or

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

(f) Filing a Confidential Information Form.

(1) In General. A filing that contains redacted information must be filed together with a confidential information form (shown in Appendix H) that identifies each item of

redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The form will be confidential except as to the parties or as the court may direct. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(2) Defendant Information. In a criminal case, the prosecutor must file a confidential information form that includes, when known, the defendant's social security number.

(g) Non-conforming Documents.

(1) Waiver. A person waives the protection of Rule 3.4 (a) as to the person's own information by filing it without redaction and not under seal.

(2) Sanctions. If a party fails to comply with this rule, the court on motion of another party or its own motion, may order the pleading or other document to be returned to the party for reformation prior to filing, with an extension of any deadline to complete the filing. If the document has been filed, and an order to reform is not obeyed, the court may order the document stricken.

EXPLANATORY NOTE

Rule 3.4 was adopted effective March 1, 2009. Rule 3.4 was amended, effective March 15, 2009; March 1, 2010; May 1, 2017;_____.

Parties should limit the amount of protected information they include in court filings. This rule requires parties to redact protected information when its inclusion in a filing cannot be avoided.

This rule's redaction requirements are intended to exclude protected information

from public disclosure. Unless a document is also placed in a non-restricted file, redaction of documents filed in cases that are confidential by law or rule is not required.

The term "financial-account number" includes any credit, debit or electronic fund transfer card numbers, and any other financial account number.

Documents containing redacted protected information must be filed together with a confidential information form under subdivision (f) when a party is required by statute, policy or rule to include the protected information in the document. For example, N.D.C.C. § 14-05-02.1 requires a divorce decree to contain the social security numbers of the parties to the divorce. Under subdivision (f), a party to a divorce case may comply with this statute and the redaction requirements of this rule by filing a confidential information form and a redacted version of the decree in the public part of the file.

Subdivision (a) was amended, effective March 1, 2010, to eliminate the requirement to redact addresses in criminal matters.

Subdivision (a) was amended, effective May 1, 2017, to require, upon request of the victim, the redaction of all victim contact information from documents before they may be filed with the court in a criminal or delinquency case. This right is granted by N.D. Const. Art. I, § 25(1)(e). "Victim" is defined in N.D. Const. Art. I, § 25(4).

Subdivision (b) was adopted, effective March 1, 2010, to indicate it is the responsibility of a party or nonparty making a court filing to refrain from including protected information in the filing.

The clerk of court is not required to review a document filed with the court for compliance with this rule.

Subdivision (c), formerly subdivision (b), was amended, effective March 1, 2010, to add a redaction exemption for the name of a minor when the minor is a party and there is no statute, regulation or rule mandating nondisclosure of the minor's name.

Subdivision (c), formerly subdivision (b), was amended, effective March 1, 2010, to add a redaction exemption for a defendant's date of birth in a court filing that is related to criminal matters, non-criminal motor vehicle and game and fish matters, and infractions.

Subdivision (f) was amended, effective March 1, 2010, to require that state's attorneys file confidential information forms containing certain defendant information when known.

Subdivision (g) was amended, effective March 1, 2010, to allow courts to order reformation of documents not in conformity with this rule prior to filing.

Rule 3.4 was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

Sources: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 26-27, 2017, page 22; September 24-25, 2009, pages 3-7; May 21-22, 2009, pages 28-44; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31.

STATUTES AFFECTED:

CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 31-15, § 14-05-02.1.

CROSS REFERENCE: N.D.R.Ct. 3.1 (Pleadings); N.D.Sup.Ct.Admin.R. 41 (Access to Judicial Records).

RULE 3.5 ELECTRONIC FILING IN DISTRICT COURTS

(a) Electronic Filing.

(1) Documents filed electronically in the district courts must be submitted through the Odyssey electronic filing system.

(2) All documents filed after the initiating pleadings in criminal and juvenile cases must be filed electronically. All documents in civil, non-juvenile, cases must be filed electronically. A party who files a complaint in a civil case must electronically serve notice of filing on the other parties or their attorneys.

(3) Self-represented litigants and prisoners are exempt from the electronic filing requirement and may file paper documents in person, by mail, or by third party commercial carrier. Self-represented litigants and prisoners who wish to file documents by electronic means must use the Odyssey system.

(4) On a showing of exceptional circumstances in a particular case, anyone may be granted leave of court to file paper documents. Original wills, codicils and other documents of independent legal significance may be filed as paper documents. Colored or shaded documents may be filed as paper documents if necessary to ensure legibility.

(5) A document filed electronically has the same legal effect as a paper document.

(6) Any signature on a document filed electronically is considered that of the officer of the court or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court must strike the filing.

(7) A party who electronically files a proposed order must identify the filing party

in the Odyssey filing description field.

(b) Filing Formats.

(1) Approved formats for documents filed electronically are WordPerfect (.wpd), Tagged Image File (.tif), Portable Document File (.pdf) and ASCII (.txt).

(2) All paragraphs must be numbered using arabic numerals in documents filed electronically. Reference to material in such documents must be to paragraph number, not page number. Paragraph numbering is not required in exhibits, documents that consist of a single paragraph, documents prepared before the action was commenced, or in documents not prepared by the parties or court.

(3) A document submitted for electronic filing must comply with published guidelines (N.D.R.Ct. Appendix K Rule 3.5 Electronic Filing Requirements).

(c) Time of Filing.

(1) A document in compliance with the rules and submitted electronically to the district court clerk by 11:59 p.m. local time is considered filed on the date submitted. A document electronically signed by the court is considered filed when the e-signature is affixed.

(2) After reviewing an electronically filed document, the district court clerk must inform the filer, through an e-mail generated by the Odyssey system, whether the document has been accepted or rejected. A notice of rejection must state all provisions of Appendix K or other statute, rule or case relied upon.

(3) If a document submitted for electronic filing is rejected, the time for filing is tolled from the time of submission to the time the e-mail generated by the Odyssey

system notifying the filer of rejection is sent. The document will be considered timely filed if resubmitted within three days after the notice of rejection.

(4) Any required filing fee must be paid by credit card or debit card at the time the document is filed.

(d) Confidentiality. In documents prepared for filing with the court, information that would otherwise be included in the document but required by N.D.R.Ct. 3.4 to be redacted in court documents must be separately filed in a reference sheet (confidential information form, see appendix) and may be included in those documents only by reference. Any document not complying with this order is subject to N.D.R.Ct. 3.4(g).

(e) Electronic Service.

(1) All documents filed electronically after the initiating pleadings must be served electronically through the Odyssey system except for documents served on or by self-represented litigants and prisoners. On a showing of exceptional circumstances in a particular case, anyone may be granted leave of court to serve paper documents or to be exempt from receiving electronic service. Attorneys who are required by rule or statute to serve documents on their own clients may serve paper documents.

(2) Except as provided in N.D.R.Ct. 3.5(e)(4), electronic service of a document is not effective if the party making service learns through any means that the document did not reach the person to be served.

(3) All attorneys must provide at least one e-mail address to the State Board of Law Examiners for accepting electronic service. Designated e-mail service addresses will be posted on the North Dakota Supreme Court website.

(4) For purposes of computation of time, any document electronically served must be treated as if it were delivered on the date of transmission. If an attorney who is not exempt from electronic service fails to provide an e-mail address for service or fails to accept or open electronically served e-mail, the server's attempt at electronic service constitutes delivery. Service made impossible due to an attorney's failure to provide an e-mail address must be shown by ~~an affidavit~~ a declaration or certificate of attempted service.

(5) Counsel are required to use the Attorney Subscription Management System for notice of filing by the court in the Odyssey system.

(f) Technical Issues; Relief. On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

(g) Filed Electronic Documents. An electronic document filed, accepted and docketed in the Odyssey electronic filing system is a court record. No further proof that the document is a court record is required when the record is distributed between courts or files using the Odyssey system.

EXPLANATORY NOTE

Adopted effective January 15, 2013; amended effective April 15, 2013; June 1, 2013; June 1, 2015; March 1, 2016; March 1, 2017; March 1, 2019;_____.

Rule 3.5 was originally adopted as N.D.Sup.Ct.Admin.O. 16 on March 1, 2006. Order 16 was later amended, effective March 1, 2008; March 1, 2009; August 1, 2010; March 1, 2011; July 1, 2012; March 1, 2018.

Order 16 was amended, effective July 1, 2012, to incorporate the provisions of the Order 16 Addendum (Filing in the District Court where Odyssey Electronic Filing is Available) and N.D.Sup.Ct.Admin.O. 18 (Filing in Counties Using the Odyssey Case Management System). The Order 16 Addendum and Order 18 were repealed, effective July 1, 2012.

In an appeal from an agency determination under N.D.C.C. § 28-32-42, the notice of appeal must be served on all the entities listed in the statute, some of whom may not be subject to electronic service through the Odyssey system.

Subdivision (a) was amended, effective March 1, 2016, to clarify that self-represented litigants and prisoners who wish to file documents electronically must use the Odyssey system and to require a party filing a proposed order to identify the party in the Odyssey filing description field.

Paragraph (b)(1) was amended, effective June 1, 2015, to remove Word documents from the list of approved formats for electronic filing in the Odyssey system. If a court requests that parties submit editable documents such as proposed findings or orders, Word or other editable format documents still may be e-mailed to the court for that purpose but only after e-filing the documents in Odyssey in an approved format.

Paragraph (b)(2) was amended, effective March 1, 2018, to specify that paragraphs must be numbered using arabic numerals.

Paragraph (b)(2) was amended, effective March 1, 2019, to except documents that consist of a single paragraph from the paragraph numbering requirement.

Paragraph (b)(3) was added, effective March 1, 2018, to add a reference to

Appendix K, which contains document guidelines.

Subdivision (c) was amended, effective March 1, 2016, to clarify that a document electronically signed by the court is considered filed when the e-signature is affixed.

Subdivision (c) was amended, effective March 1, 2018, to require a notice of document rejection to state all provisions of Appendix K or other statute, rule or case relied upon for the rejection and to delete the requirement to file a notice of resubmission.

Paragraph (e)(4) was amended, effective March 1, 2018, to provide that documents served electronically are treated as delivered on the day of transmission.

Paragraph (e)(5) was added, effective March 1, 2018, to require counsel to use the Attorney Subscription Management System for notice of filing by the court.

Subdivision (g) was added, effective March 1, 2017, to explain that once a document is accepted into the Odyssey system, the document is a court record and no further proof that the document is a court record is needed when the record is distributed between courts or files using the Odyssey system.

Rule 3.5 was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

Sources: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; April 27, 2018, pages 13-14; September 28, 2017, pages 2-10; April 27, 2017, pages 14-19; January 26-27, 2017, page 30; May 12-13, 2016, pages 15-22; January 28-29, 2016,

pages 8-11; April 23-24, 2015, pages 2-3; January 29-30, 2015, pages 13-14; April 25-26, 2013, pages 3-16; January 31-February 1, 2013,pages 2-5, 15-18; September 27, 2012, pages 14-21; April 29-30, 2010, page 21; April 24-25, 2008, pages 12-16; October 11-12, 2007, pages 3-5; April 26-27, 2007, pages 16-18; January 25, 2007, pages 15-16; September 23-24, 2004, pages 18-27.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15, § 28-32-42.

CROSS REFERENCES: N.D.R.Ct. 3.1 (Pleadings); N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court); N.D.R.Ct. Appendix K (Electronic Filing Requirements); N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction; Process; Service); N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Documents); N.D. Admission to Practice R. 1(General Requirements for Admission).

RULE 5.2 EXTRAORDINARY WRITS

(a) General Provisions.

(1) This rule applies to petitions for relief under the writs of habeas corpus, certiorari, mandamus, prohibition and quo warranto.

(2) A person seeking relief will be designated as the petitioner. All parties to the proceeding other than the petitioner will be designated as respondents.

(3) Except as they are inconsistent or in conflict with statute or this rule, the Rules of Civil Procedure apply to proceedings under this rule in district court and the Rules of Appellate Procedure apply to proceedings under this rule in the supreme court.

(b) Application Procedure

(1) A party seeking relief must file a verified petition with the appropriate court clerk.

(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 and why relief should be granted.

(3) The petition must include a copy of any order or opinion or parts of the record that are necessary to understand the matters set forth in the petition. If a petition is supported by briefs, ~~affidavits~~ declarations, or other papers, they must be filed with the petition.

(4) A copy of the petition must be served on the respondents.

(c) Action by Court

(1) The court may deny a petition, or grant preliminary relief to a petitioner, without requiring a response or holding a hearing.

(2) The court may not grant final relief to a petitioner without giving all parties an opportunity to respond to the petition or to show cause why the requested relief should not be granted.

(3) The court may make appropriate orders, including:

(A) allowing amendment of the petition or any response or motion;

(B) allowing additional amendments, responses or motions;

(C) extending the time for filing any amendment, response or motion.

(4) At any time before the entry of a final order or grant of final relief, the court may, for good cause, grant leave to withdraw the petition without prejudice.

(5) The court may, for good cause, grant leave to use discovery procedures to the petitioner or any respondent. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

(6) The court may hold a hearing on a petition on its own motion or upon request of any party.

EXPLANATORY NOTE

The content of Rule 5.2 was transferred from Rule 8.10, effective March 1, 2013. Rule 8.10 was originally adopted, effective March 1, 2005. Rule 5.2 was amended effective_____.

Article VI of the North Dakota Constitution gives the supreme court and the district courts the power to issue writs and to grant relief. The North Dakota Century Code defines the types of preliminary and final relief that may be obtained through statutory writ proceedings. See N.D.C.C. chs. 32-13 (writ of quo warranto); 32-22 (writ of habeas corpus); 32-33 (writ of certiorari); 32-34 (writ of mandamus); 32-35 (writ of prohibition).

The Rules of Civil Procedure govern writ proceedings to the extent provided by paragraph (a)(3) of this rule. Under N.D.R.Civ.P. 81, when statutory writ procedure is inconsistent or in conflict with the Rules of Civil Procedure, the statutory procedure governs.

Rule 5.2 was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 29-30, 2004, page 13; September 18-19, 2003, pages 19-24; April 24-25, 2003, pages 4-6; January 30-31, 2003, pages 18-20; September 26-27, 2002, pages 18-20.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 32-32-02, 32-32-04, 32-32-05, 32-32-06; 32-33-02.

CONSIDERED: N.D.C.C. ch. 31-15; §§ 32-13-01; 32-13-02; 32-13-03; 32-13-04; 32-13-06; 32-13-06; 32-13-07; 32-13-08; 32-13-09; 32-13-10; 32-13-11; 32-22-01;

32-22-02; 32-22-03; 32-22-04; 32-22-05; 32-22-06; 32-22-07; 32-22-08; 32-22-09; 32-22-10; 32-22-11; 32-22-12; 32-22-13; 32-22-14; 32-22-15; 32-22-16; 32-22-17; 32-22-18; 32-22-19; 32-22-20; 32-22-21; 32-22-22; 32-22-23; 32-22-24; 32-22-25; 32-22-26; 32-22-27; 32-22-28; 32-22-29; 32-22-30; 32-22-31; 32-22-32; 32-22-33; 32-22-34; 32-22-35; 32-22-36; 32-22-37; 32-22-38; 32-22-39; 32-22-40; 32-22-41; 32-22-42; 32-22-43; 32-32-01, 32-32-03, 32-33-01; 32-33-03; 32-33-04; 32-33-05; 32-33-06; 32-33-07; 32-33-08; 32-33-09; 32-33-10; 32-33-11; 32-33-12: 32-34-01; 32-34-01.1; 32-34-02; 32-34-03; 32-34-04; 32-34-05; 32-34-06; 32-34-07; 32-34-08; 32-34-09; 32-34-10; 32-34-11; 32-34-12; 32-34-13; 32-35-01; 32-35-02; 32-35-03; 32-35-04.

CROSS REFERENCE: N.D.R.Civ.P. 81 (Applicability—In General); N.D.R.App.P. 21 (Supervisory Writs); N.D.Sup.Ct.Admin.R. 27 (Court of Appeals).

RULE 6.1 CONTINUANCES

(a) Attorney Engaged. A party is entitled to a continuance on the ground that his attorney is actually engaged in another trial or hearing, but only for the duration of the particular trial or hearing in which the attorney is then engaged.

(b) Other Continuances. Motions for continuance shall be promptly filed as soon as the grounds therefor are known and will be granted only for good cause shown, either by ~~affidavit~~ a declaration or otherwise. Stipulations for continuance will not be recognized except for good cause shown. Every continuance granted upon motion must be to a future date consistent with the docket currency standards for district courts, except for good cause shown.

EXPLANATORY NOTE

Rule 6.1 was amended, effective March 1, 2005;_____.

Subdivision (b) was amended effective March 1, 2005, to provide that the docket currency standards for district courts, which are set out in N.D. Sup. Ct. Admin. R. 12, must be considered when a continuance is granted.

Rule 6.1 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Council of Presiding Judges Minutes of March 17, 2004; Joint

Procedure Committee Minutes of April 24, 2020, pages 4-5.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D. Sup. Ct. Admin. R. 12 (North Dakota Docket Currency Standards for District Courts).

RULE 7.1. JUDGMENTS, ORDERS AND DECREES

(a) Preparation of Orders and Decrees--Presentation of Drafts. Whenever the court makes a ruling other than in the course of trial, the attorney for the prevailing party must prepare and present to the court the order, order for judgment, or decree to be entered, unless the court directs otherwise. All proposed orders and judgments must be filed with the clerk.

(b) Preparation of Findings of Fact and Conclusions of Law.

(1) Preparation by One or More Parties. Preparation of proposed findings of fact and conclusions of law under N.D.R.Civ.P. 52(a) may be assigned by the court to one or more parties. Any findings of fact and conclusions of law prepared by one or more parties must be served upon all other parties for review and comment. ~~The other parties~~ A party may file and serve a response in writing, within 14 days of service, or such other time as the court, in its discretion, may allow. All proposed findings of fact and conclusions of law must be filed with the clerk. The court must thereafter enter findings of fact and conclusions of law as it may deem appropriate.

(2) Preparation by Court. If the court chooses to prepare its own findings of fact and conclusions of law, the parties may, in the discretion of the court, be allowed to submit and file proposed findings of fact and conclusions of law within the time specified by the court for that purpose. The court may consider such proposed findings of fact and conclusions of law submitted and filed by the parties, and may adopt, modify, or reject any proposed findings of fact or conclusion of law regardless of who submitted and filed

it with the court.

(3) Amendment of Findings. Nothing contained in this Rule of Court affects the right of any party to move the court for an order amending the findings of fact finally entered by the court or to make additional findings, under N.D.R.Civ.P. 52(b).

(c) If a party prepares documents under this rule, copies must be served upon all other parties.

(d) Satisfaction of Judgment for Money When Judgment Creditor Cannot Be Found.

(1) Satisfaction by Motion. A judgment for money may be satisfied by the court, if no execution is outstanding and the time for appeal has expired, as follows:

(A) The judgment debtor may file a motion for satisfaction with the court, supported by ~~an affidavit~~ a declaration executed by the judgment debtor or the judgment debtor's attorney stating the following:

(i) the amount of the original judgment and the judgment balance, and accrued interest and costs due the judgment creditor;

(ii) that after the exercise of due diligence the judgment creditor and the judgment creditor's attorney cannot be found or that the judgment creditor or the judgment creditor's attorney has failed or refused to deliver a satisfaction of judgment upon being tendered or paid the amount due; and

(iii) that notice of the motion has been sent by mail or third-party commercial carrier to the judgment creditor and the judgment creditor's attorney at their respective last-known addresses.

(B) Upon granting the motion, the court shall enter an order directing the clerk to receive the amount due on the judgment with accrued interest and costs for the judgment creditor. After payment, the court must enter an order satisfying the judgment and showing the amount deposited with the clerk.

(C) For purposes of this rule, the word "judgment" includes a decree for payment of money upon which execution could issue.

(2) Satisfaction by ~~Affidavit~~ Declaration. A judgment for money may be satisfied by the clerk of the court in which the judgment was rendered, if no execution is outstanding and the time for appeal has expired, as follows:

(A) The judgment debtor or the judgment debtor's attorney may execute and file ~~an affidavit~~ a declaration for satisfaction with the clerk stating the following:

(i) the amount of the original judgment and the judgment balance, and accrued interest and costs due the judgment creditor;

(ii) that the judgment debtor desires to pay the amount due on the judgment; and

(iii) that after the exercise of due diligence the judgment creditor and the judgment creditor's attorney cannot be found or that the judgment creditor or the judgment creditor's attorney has failed or refused to deliver a satisfaction of judgment upon being tendered the amount due.

(B) Upon receipt of the ~~affidavit~~ declaration and payment of the amount due on the judgment with accrued interest and costs for the judgment creditor, the clerk must:

(i) note satisfaction of the judgment on the judgment docket and on the register of the action in which the judgment was entered;

(ii) execute under the seal of the court and deliver to the judgment debtor a certificate reciting that the amount paid in satisfaction of the judgment, with accrued interest and costs, has been received and that the judgment has been fully paid and satisfied; and

(iii) notify all persons of record in the action appearing to have any interest in, or lien upon, the judgment, including the attorney of record for the original judgment creditor, that the clerk has received the amount due on the judgment and that the judgment has been satisfied of record. The notice must be in writing and must be given by certified or registered mail to the last-known post office address of each of the persons entitled to receive the notice. The clerk must file the receipts for mailing the notice with the other papers in the action.

(C) Upon demand, the clerk must pay the amount received in satisfaction of the money judgment, with accrued interest and costs, to the person entitled to receive payment of the judgment amount. The clerk must take duplicate receipts for payment, one to be held by the clerk and one to be filed with the other papers in the action.

(D) A satisfaction of judgment entered by a clerk before the time for appeal has expired is void and without prejudice to a judgment creditor or the judgment creditor's assigns.

EXPLANATORY NOTE

Rule 7.1 was amended, effective March 1, 1994; March 1, 1999; March 1, 2003; March 1, 2011;_____.

Rule 7.1 was amended, effective March 1, 1994, in response to GeoStar Corp. v.

Parkway Petroleum, Inc., 495 N.W.2d 61, 65-66 (N.D. 1993) and Disciplinary Action Against Wilson, 461 N.W.2d 105 (N.D. 1990). The amendment to subdivision (a) requires the prevailing party to prepare a draft of the order or decree whenever the court makes a ruling other than in the course of trial. Former subdivision (a) also required the prevailing party to prepare drafts of the order, order for judgment, or decree to be entered, whenever the court made a final determination in an action.

Rule 7.1 was amended, effective March 1, 2011, to require a party who submits proposed orders, judgments, findings of fact or conclusions of law to the court to file these proposals with the clerk.

Subdivision (b) was amended, effective _____, to clarify that a party may file and serve a response to proposed findings of fact and conclusions of law.

New subdivisions (b) and (c) were added. Former subdivision (b) was changed to subdivision (d). New subdivision (b) concerns the preparation of findings of fact and conclusions of law under Rule 52(a), N.D.R.Civ.P. New subdivision (c) was added to provide notice to all parties and to prevent ex parte contact with the court.

Paragraph (b)(1) was amended, effective March 1, 2011, to increase the time to serve a response to proposed findings of fact and conclusions of law from 10 to 14 days.

Subdivision (d) was amended, effective March 1, 1999, to allow a notice of the motion to satisfy to be sent via commercial carrier as an alternative to mail.

Subdivision (d) was amended, effective March 1, 2003, to incorporate the provisions of N.D.C.C. § 28-20-28, which permit a money judgment to be satisfied upon payment of the amount due to the clerk of the court in which the judgment was rendered

without filing a motion for satisfaction with the court. The amendments permit a judgment debtor to satisfy a judgment for money by either filing a written motion for satisfaction with the court and paying the amount due upon entry of an order of satisfaction, or by paying the amount due to the clerk and receiving from the clerk a certificate of satisfaction.

Rule 7.1 was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 26, 2019, pages 12-15; September 23-24, 2010, page 26; April 29-30, 2010, page 21; January 24-25, 2002, pages 5-7; September 27-28, 2001, page 18; January 29-30, 1998, page 22; April 29-30, 1993, page 11; January 28-29, 1993, pages 9-10.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 28-20-28.

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 52 (Findings by the Court) and N.D.R.Civ.P. 60 (Relief From Judgment of Order).

RULE 8.2 INTERIM ORDERS IN DOMESTIC RELATIONS CASES

(a) Ex Parte Interim Order.

(1) No interim order may be issued except on notice and hearing unless the court specifically finds exceptional circumstances. Exceptional circumstances include:

(A) threat of imminent danger to any party or minor child of the party; or

(B) circumstances indicating that an ex parte interim order is necessary to protect the parties, any minor children of the parties, or the marital estate.

(2) No ex parte interim order may be issued unless the moving party executes ~~an affidavit~~ a declaration setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the moving party also appears personally and good cause is shown for issuance of the order.

(3) An ex parte interim order may include provisions relating to temporary parental rights and responsibilities, support and other appropriate expenses, use of real or personal property, restraining and eviction.

(4) If there has been an appearance in the action by the opposing party, or if the attorney for the moving party has knowledge that the opposing party is represented by an attorney, the attorney for the moving party must notify the court. After receiving notice of the appearance or representation, the court must attempt to hold an emergency hearing, either in person or by telephonic conference, at which both parties may be heard, before issuing any order. The issuance of an order following an emergency hearing will in no manner affect a party's right to a further hearing on the merits of the order as provided in

Rule 8.2(a)(5).

(5) An ex parte interim order must specifically provide:

(A) that a hearing upon the necessity for the issuance of the order or the amounts to be paid be held within 30 days of the issuance of the ex parte interim order, unless an earlier hearing is required under N.D.C.C. ch. 14-07.1, or an application for change of venue is pending. If the ex parte interim order contains provisions delineated in N.D.C.C. ch. 14-07.1, the hearing must be scheduled in a timely manner under the chapter;

(B) that the party obtaining the ex parte interim order must secure a hearing date and personally serve the ex parte interim order and a notice of hearing on the opposing party; and

(C) that the hearing on the ex parte interim order may be waived if the opposing party files a written waiver with the court no later than two days before the hearing date. The written waiver must be served on the moving party.

(6) The ex parte interim order remains in effect until it is amended following a court hearing.

(7) An ex parte interim order modifying parenting time may be issued postjudgment.

(8) No ex parte interim order modifying primary residential responsibility may be issued postjudgment.

(b) Interim Orders on Motion and Hearing.

(1) Support. An interim order may provide for payment of support and other appropriate expenses. In the event support is ordered, a current mailing address must be

listed for both parties.

(2) Parental Rights and Responsibilities. An interim order providing for temporary parental rights and responsibilities and a parenting schedule of minor children may be granted, in which case the order must provide for reasonable parenting time, unless the evidence establishes that parenting time should be restricted to certain times and places or prohibited.

(3) Attorney's Fees and Costs. An interim order may provide for payment of attorney's fees and costs if evidence establishes that a party has insufficient personal income or funds with which to pay attorney's fees and costs.

(4) Use of Property. An interim order may provide for the use of real or personal property, and for restraining and eviction.

(5) An interim order may not be amended except upon stipulation of the parties or in the event of a material change of circumstances.

(~~c~~ 6) Payment. The interim order must provide for any spousal support payment, child support payment, or combined payment of child support and spousal support, to be paid to and through the State Disbursement Unit. Payment must be in a manner acceptable to the State Disbursement Unit unless otherwise ordered by the court.

(~~d~~ 7) Time for Hearing Upon Notice. If a notice of motion and motion are served to obtain an interim order, the court shall hold a hearing no later than 30 days from the date of filing the motion. If venue is changed before the hearing for an interim order is held, the hearing for an interim order must be held no later than 30 days after venue is changed.

(c) Motions for Temporary Modification of Residential Responsibility.

(1) No interim orders to modify residential responsibility may be heard unless the moving party files a motion to modify residential responsibility under N.D.C.C. 14-09-06.6 and Rule 3.2 and a motion for a temporary modification of residential responsibility under this rule and demonstrates the following:

(A) that there exists a threat of imminent danger to a minor child of the party; or

(B) that there are present circumstances indicating that an interim order is necessary to protect a minor child of the parties; and

(C) that good cause exists for the court to issue an order setting the matter on for hearing on shorter notice than provided under these rules and that a waiver for the requirements of Rule 8.3.1 is necessary.

If the moving party is able to demonstrate that the above criteria are met, then court must notify the parties and schedule the matter for a hearing on shortened notice as soon as possible.

If the court does not find that the moving party has met the criteria for an interim order the parties will be notified to proceed under Rule 8.3.1.

(3) Motions requesting a temporary modification of residential responsibility must include the following notice:

PLEASE TAKE NOTICE that the moving party has requested expedited review of this Motion for Temporary Modification of Residential Responsibility and has requested that the court hold a hearing on this matter immediately. If the court grants a hearing on

this motion, you will receive a Notice of Hearing with the specific time and date of the hearing. Any response to the motion for interim order must be received at least 24 hours in advance of the time scheduled for the hearing.

(~~c~~ d) Submission of Evidence.

(1) Financial Statement. In any proceedings under this rule, each party must file an itemized financial statement prepared as illustrated in appendix B.

(2) ~~Affidavit~~ Declaration. Unless the court otherwise orders, evidence either in support of or in opposition to the interim order must be presented by ~~affidavit~~ declaration. Evidence presented by ~~affidavit~~ declaration may not be considered unless the party offering the ~~affidavit~~ declaration makes the ~~affiant~~ declarant available for cross-examination. A party wishing to exercise his or her right to cross-examine any non-party ~~affiant~~ declarant must notify the party proffering the ~~affidavit~~ declaration testimony at least 24 hours before the start of the hearing or may be considered to have waived the right to cross examination.

(3) Time for Service and Filing.

(A) Moving Party. The ~~affidavits~~ declarations and itemized financial statement of the moving party must be served and filed no later than 21 days prior to the hearing.

(B) Responding to Initial Motion. If the respondent does not raise any new issues, the respondent's ~~affidavits~~ declarations and itemized financial statement must be served and filed no later than seven days prior to the hearing.

(C) Respondent Raising New Issues. If the respondent raises new issues other than

those raised in the initial motion, the respondent's ~~affidavits~~ declarations and itemized financial statement must be served and filed no later than 14 days prior to the hearing. If the moving party responds to new issues raised by the respondent, any ~~affidavit~~s declarations must be served and filed no later than seven days prior to the hearing. A new issue means any issue listed in subdivision (b) not raised by the moving party.

(4) Order of Proceeding. The party initially seeking interim relief must proceed first at the hearing.

EXPLANATORY NOTE

Rule 8.2 was amended, effective September 1, 1983; January 1, 1995; March 1, 1996; March 1, 1999; March 1, 2001; October 9, 2002; August 1, 2009; March 1, 2010; March 1, 2011; March 1, 2014;_____.

A motion for a change of venue must be promptly ruled on to accomplish the Committee's intent for interim orders to be expeditiously heard.

Subdivision (a)(5) was amended, effective March 1, 2010, to provide, unless waived, a mandatory hearing upon the necessity for the issuance of the order or the amounts to be paid be held within 30 days of the issuance of an ex parte interim order.

Subdivision (a) was amended, effective March 1, 2011, to add new paragraphs (8) and (9), clarifying types of ex parte interim orders that may be requested post judgment. Under N.D.C.C. § 14-09-06.6, notice is required prior to postjudgment modification of primary residential responsibility. If exceptional circumstances exist, a postjudgment modification of parenting time may be made ex parte.

~~Subdivision~~ Paragraph (b)(5) was added, effective March 1, 2001.

~~Subdivision (c)~~ Paragraph (b)(6) was amended, effective March 1, 2001; October 9, 2002. When an order for child support or spousal support is entered, the order must provide for payment to and through the State Disbursement Unit.

A new subdivision (c) was inserted, effective _____, to provide a procedure for motions for temporary modification of residential responsibility.

Paragraph (~~c~~ d)(2) was amended, effective March 1, 2011, to require a party wishing to cross-examine ~~an affiant~~ a declarant to provide pre-hearing notice to the party offering the ~~affidavit~~ declaration.

Paragraph (~~c~~ d)(2) was amended, effective March 1, 2014, to clarify that a party wishing to cross-examine an opposing party does not need to provide pre-hearing notice.

Paragraph (~~c~~ d)(3) was amended, effective March 1, 2011, to change the time for service and filing of ~~affidavits~~ declarations.

This rule was amended, effective _____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, page 4; April 26, 2019, pages 28-30; January 31-February 1, 2013, pages 10-11; September 23-24, 2010, pages 3-7; April 29-30, 2010, pages 7-9, 27; January 28-29, 2010, pages 7-8; September 24-25, 2009, pages 10-11; May 21-22, 2009, pages 44-45; September 26-27, 2002; September 28-29, 2000, pages 9-10; January 27-28, 2000, pages 19-21; April

30-May 1, 1998, pages 8-9; April 27-28, 1995, pages 9-15; September 23-24, 1993, pages 16-17; April 20, 1989, page 17; April 26, 1984, page 17; September 30-October 1, 1982, pages 18-21; December 11-12, 1980, pages 3-4 and 7.

Statutes Affected:

Considered: N.D.C.C. ch. 31-15, § 14-09-06.6

RULE 8.3.1 CASE MANAGEMENT (DETERMINATION OF PARENTAL RIGHTS OR CHANGE OF RESIDENTIAL RESPONSIBILITY) [Alternate Draft]

(a) Compulsory Meeting.

(1) ~~In a non-divorce~~ Unless waived by the court under Rule 8.2(c)(1)(C), in any action for the determination of parental rights or a motion ~~for change of~~ to modify residential responsibility, the parties and their attorneys must meet in person or by electronic means to prepare a joint informational statement within 30 days after service of the complaint or entry of an order for an evidentiary hearing under N.D.C.C. 14-09-06.6. The statement must be in the form shown in Appendix L.

(2) The complaint and joint informational statement must be filed no later than seven days after the compulsory meeting. The parties must exchange information and documentary evidence necessary for the determination of child support. At a minimum, the parties must be prepared to exchange current paystubs, employment and income information and tax returns. The parties must determine at the meeting what additional information is necessary in order to complete the matter. The parties must decide at the meeting whether alternative dispute resolution methods are appropriate.

(b) Scheduling Order. Within 30 days after the informational statement is filed, the court must issue its scheduling order. The court may issue the order after either a telephone or in-court scheduling conference, or without a conference or hearing if none is needed. The scheduling order may establish any of the following deadlines:

(1) specific dates for the completion of discovery and other pretrial preparations;

(2) specific dates for serving, filing, or hearing motions;

(3) specific dates for completion of mediation or alternative dispute resolution;

(4) a specific date for the parties to complete parent education;

(5) specific dates for completion of parenting evaluation;

(6) a specific date by which the parties will be prepared for the pretrial conference;

(7) a specific date by which the parties will be prepared for the trial or evidentiary hearing;

(8) a specific date for identification of witnesses and documents; and

(9) a specific date by which the parties will submit the parenting plans.

(c) Request to Waive Rule Requirements. A party making a motion for change of residential responsibility may request as part of the motion to waive the requirements of the rule. The party making a waiver request must show that there is a need for expedited resolution or that there are limited and uncomplicated issues to be resolved. The party opposing a motion for change of residential responsibility may also request waiver in its response and may also resist or concur with a waiver request made by the moving party.

EXPLANATORY NOTE

Rule 8.3.1 was adopted March 1, 2018; amended_____.

Rule 8.3.1 is based on N.D.R.Ct. 8.3 and intended to apply in a non-divorce action for the determination of parental rights or a motion for change of primary residential responsibility.

Subdivision (a) was amended, effective_____to reference Rule 8.2(c) on motions for temporary modification of residential responsibility.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, page 4; April 26, 2019, pages 28-30; April 27, 2017, pages 2-3; January 26-27, 2017, pages 24-28; September 29-30, 2016, pages 29-31.

RULE 8.4 SUMMONS IN ACTION FOR DIVORCE, SEPARATION OR TO DETERMINE PARENTAL RIGHTS AND REPONSIBILITIES

(a) Restraining Provisions - Divorce or Separation. A summons in a divorce or separation action must be issued by the clerk, or by an attorney for a party to the action, and include the following restraining provisions:

(1) Neither spouse may dispose of, sell, encumber, or otherwise dissipate any of the parties' assets, except:

(A) For necessities of life or for the necessary generation of income or preservation of assets; or

(B) For retaining counsel to carry on or to contest the proceeding;

If a spouse disposes of, sells, encumbers, or otherwise dissipates assets during the interim period, that spouse shall provide to the other spouse an accounting within 30 days.

(2) Neither spouse may harass the other spouse.

(3) All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.

(4) Except for temporary periods, neither spouse may remove any of their minor children from North Dakota without the written consent of the other spouse or order of the court.

(5) Each summons must include the following statement in bold print:

If either spouse violates any of these provisions, that spouse may be in contempt of court..

(b) Restraining Provisions - Action to Determine Parental Rights and

Responsibilities. A summons in an action to determine parental rights and responsibilities must be issued by the clerk, or by an attorney for a party to the action, and include the following restraining provisions:

(1) Except for temporary periods, neither party may remove any of their minor children from North Dakota without the written consent of the other party or order of the court.

(2) Each summons must include the following statement in bold print:

If a party violates any of these provisions, that party may be in contempt of court.

(c) Applicability of Restraining Provisions. The restraining provisions contained in the summons apply to both parties upon service of the summons. The provisions are effective until otherwise provided by court order or by written stipulation of the parties filed with the court.

(d) Service by Publication. If a summons is served by publication under N.D.R.Civ.P. 4(e), the Rule 8.4 restraining provisions may be omitted from the published summons. A complete summons, including the Rule 8.4 restraining provisions, must be filed with the complaint and ~~affidavit~~ declaration for service by publication in the manner set out in N.D.R.Civ.P. 4(e)(2) and mailed under N.D.R.Civ.P. 4(e)(4).

EXPLANATORY NOTE

Rule 8.4 was amended, effective March 1, 2007; August 1, 2009; March 1, 2014; March 1, 2017;_____.

Rule 8.4 was adopted, effective March 1, 1996.

Subdivisions (a) and (b) were amended, effective March 1, 2017, to eliminate the

requirement that the clerk issue a summons "under the seal of the court."

Subdivision (c) was added, effective March 1, 2007, to require restraining provisions to be included in a summons in an action to determine parental rights and responsibilities.

Subdivision (d) was added, effective March 1, 2014, to allow omission of this rule's restraining provisions from the published version of a summons served under N.D.R.Civ.P. 4(e).

Rule 8.4 was amended, effective_____, to delete the term “affidavit” and replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 24-25, 2015, pages 27-28;September 26, 2013, page 30; May 21-22, 2009, pages 44-45; April 27-28, 2006, pages 9-10; January 26, 2006, page 13; April 27-28, 1995, pages 17-21.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Ct. Appendix A (Summons in Action for Divorce or Separation); N.D.R.Civ.P. 4 (Commencement of Action - Service of Process, Pleadings, Motions and Orders).

RULE 8.5 DOMESTIC RELATIONS SUMMARY PROCEEDING

(a) Definition and Application.

(1) A summary proceeding may be used by parties to settle a controversy, dispose of a case, or conduct a trial when a party seeks an order, judgment, or amended judgment, under N.D.C.C. chs. 14-04, 14-05, and 14-09.

(2) A summary proceeding may be used when the combined net assets of the parties do not exceed a fair market value of $50,000, exclusive of the homestead, as defined under N.D.C.C. § 47-18-01.

(b) Beginning of Action - Petition - Summons - Plaintiff's Financial ~~Affidavit~~ Declaration. An action filed under this rule begins when any person signs and files with the court a petition and financial ~~affidavit~~ declaration, and serves the petition and financial ~~affidavit~~ declaration on the defendant along with a summons and order for appearance setting a hearing. The initial hearing must be held not less than 14 days, nor more than 40 days after service of the order by the plaintiff on the defendant.

(c) Answer - Defendant's Financial ~~Affidavit~~ Declaration - Further Relief. The defendant must serve and file an answer and financial ~~affidavit~~ declaration at least 2 days before the initial hearing, but no later than 21 days after service of the order for appearance, or the defendant must be considered in default. The defendant may set forth any new matter in the answer and request further relief.

(d) Case Not Suitable for Disposition by Summary Proceeding. Either party may elect to use a non-summary proceeding, without a showing of cause, by filing a notice of

election no later than 21 days before the final hearing. If the court decides, based upon the complexity of factual or legal issues, at any stage of the proceeding that the case may not be fairly disposed of under this rule, it may order that the action be decided by the use of a non-summary proceeding.

(e) Hearing Procedures.

(1) Any hearing of the action must be informal. The court must conduct the hearings and may make its own inquiry during the hearings. The hearings must be of record and all testimony must be under oath or affirmation. A trial by jury is not permitted and attorneys may participate. Attorney's fees and costs may be assessed as provided by law. The rules of evidence do not apply to a summary proceeding.

(2) The court must hold the initial hearing with both parties present. No interim order may be issued except on notice and hearing unless the court specifically finds exceptional circumstances as set forth in Rule 8.2. No ex parte interim order may be issued unless the moving party executes ~~an affidavit~~ a declaration setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the movant also appears personally and good cause is shown for issuance of the order.

The provisions which may be included in an ex parte interim order are temporary parental rights and responsibilities, parenting time, support and other appropriate expenses, use of real or personal property, restraining and eviction.

A hearing must be scheduled within 14 days of the issuance of the interim order. The party obtaining the ex parte interim order must secure a hearing date and serve the

interim order and the order for appearance on the opposing party.

The initial hearing, whether in response to an ex parte interim order or otherwise, must be conducted by the court to afford such temporary relief to the parties and the minor children as provided in Rule 8.2(b).

(3) The court must schedule a final hearing within 60 days after the initial hearing to decide the issues of law and fact. The hearing may be continued as necessary. The court may utilize any services for the protection of persons and property that are available in a non-summary proceeding, including appointment of a guardian ad litem, mediator, or referee. The costs of services may be assessed as provided by law against the parties in the proportion as the court determines just and equitable.

(4) There will be no formal discovery. At the initial hearing, or at any subsequent time, the court must specify information to be furnished in addition to the financial ~~affidavit~~ declaration.

(5) Mediation, or other nonadversarial methods, should be used when appropriate as a means of resolving disputes.

(f) Judgment or Order. Based upon the evidence presented, the court must issue a written judgment or order indicating its decision in all cases begun under this rule. A judgment or order may be entered without the appearance of either party at the final hearing. The court may utilize all powers available to a district court which are not in conflict with this rule. The court must make findings of fact and conclusions of law in writing or orally and recorded in open court.

(g) Appeal. An appeal to the Supreme Court may be taken by a party as in any

civil action.

(h) Option. The presiding judge of each judicial district may designate one or more judges or referees who will use the proceeding.

EXPLANATORY NOTE

Rule 8.5 was amended, effective August 1, 2009; March 1, 2011;_____.

Rule 8.5 was made permanent, effective February 12, 2003.

Rule 8.5 was initially adopted, effective October 1, 1996, as a pilot project in two judicial districts. Subdivision (h) was amended, effective August 1, 2001, to permit the presiding judge of each judicial district to designate one or more judges or referees to use the proceeding.

Paragraph (a)(2) was amended, effective March 1, 2011, to increase the limit on combined net assets from $20,000 to $50,000.

Subdivision (b) was amended, effective March 1, 2011, to increase the time to hold the initial hearing from 10 to 14 days after service of the order of appearance.

Subdivision (c) was amended, effective March 1, 2011, to increase the time for the defendant to serve and file an answer and financial ~~affidavit~~ declaration from 20 to 21 days after service of the order for appearance.

Subdivision (d) was amended, effective March 1, 2011, to change the time for a party to elect to use a non-summary proceeding from 15 to 21 days before the final hearing.

Rule 8.5 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch.

31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; September 23-24, 2010, page 25; April 29-30, 2010, page 26; May 21-22, 2009, pages 44-45; January 30-31, 2003; April 26-27, 2001, pages 6-8; September 28-29, 1995, pages 11-12.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

RULE 11.2 WITHDRAWAL OF ATTORNEYS

(a) Notice of Withdrawal. An attorney's appearance for a party may only be withdrawn upon leave of court. Reasonable notice of the motion for leave to withdraw must be given by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery, directed to the party at the party's last known business or residence address. If the notice is undeliverable, the attorney must submit ~~an affidavit~~ a declaration to the court reciting the efforts made to give notice.

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

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

(d) Limited Appearance. Rule 11.2 (a), (b), and (c) do not apply to attorneys representing a party under a notice of limited appearance served under N.D.R.Civ.P. 11(e) unless the attorney seeks to withdraw from the limited appearance prior to its completion. Upon completion of the limited appearance, the attorney must within 14 days file a "Certificate of Completion of Limited Appearance" with the court. Copies of the certificate must be provided to the client and served upon opposing counsel or opposing party if unrepresented. After the filing, the attorney has no further obligation to represent the client. The filing of the certificate is considered to be the attorney's withdrawal of appearance and does not require court approval.

(e) Unfiled Cases. This rule does not apply to attorneys representing parties in civil actions that have not been filed with the court.

EXPLANATORY NOTE

Rule 11.2 was amended, effective March 1, 1999; March 1, 2000; March 1, 2006; March 1, 2009; March 1, 2015; August 1, 2016; March 1, 2017;_____.

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

The March 1, 2000, amendments are stylistic.

Subdivision (a) was amended, effective March 1, 2015, to require the attorney, when notice of withdrawal cannot be delivered, to submit ~~an affidavit~~ a declaration regarding the efforts made to provide notice.

Subdivision (b) was amended, effective March 1, 2015, to require the attorney to provide the court with any known party e-mail addresses or telephone numbers.

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

Subdivision (d) was added, effective March 1, 2009, to make it clear that an attorney who serves a notice of limited representation to represent a party for one or more matters in a case is not required to formally withdraw upon completion of activity covered by the notice. Under N.D.R.Civ.P. 11(e), however, the attorney must serve a

notice of termination of limited representation when the attorney's involvement ends. Rule 11.2 and N.D.R.Civ.P. 5 and 11 were amended to permit attorneys to assist otherwise unrepresented parties on a limited basis without undertaking full representation of the party.

Subdivision (d) was amended, effective August 1, 2016, to clarify the attorney's responsibilities upon completing a limited appearance and to clarify that court approval is not required when the attorney completes the limited appearance and withdraws.

Subdivision (e) was added, effective March 1, 2017, to clarify that an attorney is not required to seek leave to withdraw under this rule if the action has not been filed. Subdivision (e) does not modify an attorney's obligations under N.D. Rule of Prof. Conduct 1.16.

Rule 11.2 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 28-29, 2016, page 24; September 24-25, 2015, pages 11-12; April 23-24, 2015, pages 16-25; January 29-30, 2015, page 22; September 25-26, 2014, pages 3-4; April 24-25, 2014, pages 26-27; January 24, 2008, pages 2-7; October 11-12, 2007, pages 20-26; September 23-24, 2004, page 29; May 6-7, 1999, pages 15-16; January 29-30, 1998, page 22.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers; Representation to Court; Sanctions); N.D.R. Prof. Conduct 1.2 (Scope of Representation); N.D. Rule of Prof. Conduct 1.16 (Declining or Terminating Representation).

RULE 11.4 BONDS IN NON-CRIMINAL MATTERS

(a) Personal Sureties.

(1) Schedules. Bonds having personal sureties and requiring approval by the court will be approved by the court only if the sureties have executed schedules of property in a form approved by the court, sufficient to justify the bond.

(2) Filing of Schedules. If the persons offered as sureties are accepted by the court, the schedules of property must be filed with the bond.

(3) Notice. If the persons offered as sureties are accepted by the court, copies of the schedules of property must be served upon all opposing parties in the manner prescribed by N.D.R.Civ.P. within 48 hours after the acceptance of the sureties.

(b) Rejustification of Sureties. Any person assured by a bond executed in court may by motion request the sureties to rejustify. The motion must be accompanied by ~~an affidavit~~ a declaration showing grounds for believing the sureties to be insufficient, the manner of inquiry, and the facts ascertained. If the court finds that the ~~affiant's~~ declarant's belief is well-founded, it may order either that the sureties justify within a time specified or furnish a new bond having sufficient sureties.

(c) Official Bonds. Official bonds to be approved by the court must be submitted to and approved by the judge presiding in the case, unless approval by more than one judge is required by law.

EXPLANATORY NOTE

Rule 6.1 was amended, effective _____.

Rule 6.1 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Joint Procedure Committee Minutes of April 24, 2020, pages 4-5.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

RULE 52. CONTEMPORANEOUS TRANSMISSION BY RELIABLE ELECTRONIC MEANS

Section 1. Purpose and Definition. This rule provides a framework for the use of contemporaneous audio or audiovisual transmission by reliable electronic means in North Dakota's district and municipal courts. This rule is intended to enhance the current level of judicial services available within the North Dakota court system through the use of reliable electronic means and not in any way to reduce the current level of judicial services.

Section 2. In General.

(A) Subject to the limitations in Sections 3, 4 and 5, a district or municipal court may conduct a proceeding by reliable electronic means on its own motion or on a party's motion.

(B) A party wishing to use reliable electronic means must obtain prior approval from the court after providing notice to other parties.

(C) Parties must coordinate approved reliable electronic means proceedings with the court to facilitate scheduling and ensure equipment compatibility.

(D) Each site where reliable electronic means are used in a court proceeding must provide equipment or facilities for confidential attorney-client communication.

(E) A method for electronic transmission of documents must be available at each site where reliable electronic means are used in a court proceeding for use in conjunction with the proceeding.

Section 3. Civil Action. In a civil action, a district or municipal court may conduct a hearing, conference, or other proceeding, or take testimony, by reliable electronic means.

Section 4. Criminal Action.

(A) In a criminal action, a district or municipal court may conduct a hearing, conference, or other proceeding by reliable electronic means, except as otherwise provided in Section 4 (B).

(B) Exceptions.

(1) A defendant may not plead guilty nor be sentenced by reliable electronic means unless the parties consent.

(2) ~~A~~ Except when otherwise allowed by rule or law, a witness may not testify by reliable electronic means unless the defendant knowingly and voluntarily waives the right to have the witness testify in person.

(3) An attorney for a defendant must be present at the site where the defendant is located unless the attorney's participation by reliable electronic means from another location is approved by the court with the consent of the defendant. In a guilty plea proceeding, the court may not allow the defendant's attorney to participate from a site separate from the defendant unless:

(a) the court makes a finding on the record that the attorney's participation from the separate site is necessary;

(b) the court confirms on the record that the defendant has knowingly and voluntarily consented to the attorney's participation from a separate site; and

(c) the court allows confidential attorney-client communication, if requested.

Section 5. Revocation of Probation Proceedings for Out of State Offenders.

(A) When a petition for revocation of probation has been issued for a probationer who is in another state and who has been sentenced by a court having jurisdiction in the other state to a period of incarceration, a North Dakota district court may conduct the revocation of probation hearing by reliable electronic means. Before a district court may conduct a revocation of probation hearing by reliable electronic means for a probationer serving a sentence of incarceration in another state, the district court shall:

(1) confirm on the record that the probationer has knowingly and voluntarily consented to a revocation of probation hearing by reliable electronic means; and

(2) confirm on the record that the probationer has knowingly and voluntarily consented to the probationer's attorney's representation from a site separate from the probationer; and

(3) allow the probationer opportunity for confidential attorney-client representation.

(B) If the district court orders probation be revoked, the district court shall state on the record whether the period of incarceration imposed by the other state fully or partially satisfies the sentence imposed by the district court.

Section 6. Mental Health Proceeding.

(A) In a mental health proceeding, a district court may conduct a proceeding by reliable electronic means and allow the following persons to appear or present testimony:

(1) the respondent or patient;

(2) a witness;

(3) legal counsel for a party.

(B) Notice, Objection, and Waiver.

(1) Notice. Before holding any mental health proceeding by reliable electronic means, the court must give notice to the petitioner and the respondent. The notice must:

(a) advise the parties of their right to object to the use of reliable electronic means;

(b) inform the respondent that the proceedings may be recorded on video and that, if there is an appeal, the video recording may be made part of the appendix on appeal and is part of the record on appeal.

(2) Objection.

(a) Reliable electronic means may not be used in a mental health proceeding if any party objects. The respondent must be given the opportunity to consult with an attorney about the right to object to the use of reliable electronic means.

(b) If the respondent fails to make an objection or fails to make a timely objection to the use of reliable electronic means, the court may nevertheless continue the proceeding for good cause.

(c) If the proceeding is continued, the respondent will continue to be held at the facility where the respondent was receiving treatment or, at the choice of the treatment provider in a less restrictive setting, until a face-to-face hearing can be completed.

(d) A face-to-face hearing must be scheduled to occur within four days, exclusive of weekends and holidays, of the date the objection was made, unless good cause is shown for holding it at a later time.

(3) Waiver. Upon mutual consent of the parties, and with the approval of the court, notice requirements in a mental health proceeding may be waived to allow for the conduct of proceedings without prior notice or with notice that does not conform to Section 5 (B) (1).

EXPLANATORY NOTE

This rule was adopted effective May 1, 2005. Amended effective June 1, 2005; March 1, 2015; March 1, 2019;_____.

This rule was amended, effective March 1, 2015, to extend the application of the rule to proceedings conducted by contemporaneous audio or audiovisual transmission using reliable electronic means.

Section 4(B)(2) was amended, effective_____, to allow witness testimony by reliable electronic means when authorized by rule or law.

A new Section 5 was added, effective March 1, 2019, to establish a procedure for the use of contemporaneous audio or audiovisual transmission using reliable electronic means in proceedings to revoke probation for probationers who are in another state.

SOURCES Joint Procedure Committee Minutes of January 30, 2020, page 24; September 26, 2019, pages 21-22; January 25, 2018, pages 15-16; April 24-25, 2014, pages 15-16; April 27-28, 2006, pages 22-24; April 28-29, 2005, pages 21-22; April 24-25, 2003, pages 20-23; September 26-27, 2002, pages 4-12.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. § 31-04-04.2.

RULE 57. JUDICIAL EMERGENCY

Section 1. Declaration of Judicial Emergency – Grounds. A judicial emergency may be declared to exist if an emergency or natural disaster substantially endangers or infringes upon the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, the ability of litigants or others to have access to the courts, or to meet schedules or deadlines imposed by court order or rule, statute, or administrative rule.

Section 2. Declaration of Judicial Emergency– Form and Content. A declaration of judicial emergency must be made by order of the Supreme Court, or in the absence of a majority of the Supreme Court by the Chief Justice, or if the Chief Justice is absent, a Justice or judge authorized to act under North Dakota Supreme Court Administrative Order 11. The order must state:

(1) the area affected by the order;

(2) the nature of the emergency necessitating the order;

(3) the period or duration of the judicial emergency; and

(4) any other information relevant to the suspension or restoration of court operations.

An order issued under this section is effective upon its issuance and may have retroactive effect to the extent specifically provided. The Supreme Court may modify an order declaring a judicial emergency.

Section 3. Declaration of Judicial Emergency – Notice. Upon the issuance or

modification of a judicial emergency order, notice must be given to the state court administrator, the clerk of the Supreme Court, the judges and clerks of the court for the affected area, litigants, attorneys and the public. Notice may be provided by whatever means is reasonably calculated to reach such persons under the circumstances and may, without limitation, include mailing, publication on the internet or in newspapers of local or statewide circulation, posting of written notices at courthouses or other public gathering sites, transmittal by facsimile or e-mail, or announcement on television, radio, or public address systems.

Section 4. Suspension, Extension, or Other Relief From Deadlines, Time Schedules, or Filing Requirements. An order declaring a judicial emergency, whether in civil, criminal, administrative or any other legal proceedings, as determined necessary, may suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, statutes of limitations, statutes of repose, or filing requirements imposed by otherwise applicable rules, or court orders. An order declaring a judicial emergency may not, under authority of this rule, suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, or filing requirements required by the Constitution of the United States or the Constitution of North Dakota. The days covered by a judicial emergency order are considered a legal holiday for time computation under North Dakota's court rules.

Section 5. Designation of Alternative Facility for<u>, or Alternative Method of Conducting,</u> Court Business. If the emergency or natural disaster makes access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency may designate another facility, which is reasonably accessible and

appropriate, for the business of the court or an alternative method of conducting court business.

EXPLANATORY NOTE

Rule 57 was adopted July 1, 2013. Amended effective_____.

SOURCES: Joint Procedure Committee Minutes of January 30, 2020, pages 24-25; September 26, 2019, page 22.

CROSS REFERENCE: N.D.C.C. § 27-02-27 (Judicial Emergency); N.D.R.App.P. 26 (Computing and Extending Time); N.D.R.Civ.P. 6 (Computing and Extending Time; Time for Motion Papers); N.D.R.Crim.P. 45 (Computing and Extending Time).

RULE 5. SUMMONS

(a) Summons.

(1) Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, the court must direct the issuance of a summons to the parents, guardian, or other custodian, guardian ad litem, and any other persons who are proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is 14 or more years of age or is alleged to be a delinquent or unruly child.

(2) A copy of the petition must accompany the summons unless the summons is served by publication, in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.

(3) Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, the court may order the parents, guardian, or other custodian of the child to appear personally at the hearing and direct the person who has physical custody or control of the child to bring the child to the hearing. The order must include the address of the facility where the hearing will be held.

(4) In a continued foster care matter under N.D.C.C. § 27-20-30.1, the court may order the child to appear personally.

(b) Immediate Custody Order. If it appears from ~~an affidavit~~ a declaration filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, or that the child may

leave or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may order a law enforcement officer to serve the summons and take the child into immediate custody and bring the child before the court.

(c) Right to Counsel. The summons must state that a party is entitled to counsel in the proceedings.

(d) Waiver of Service. Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, a party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in the child's behalf. In a continued foster care matter under N.D.C.C. § 27-20-30.1, a child may waive service by written stipulation or by voluntary appearance at the hearing.

(e) Hearing Without Parental Service. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with statutory time limitations.

EXPLANATORY NOTE

Rule 5 was adopted effective March 1, 2010; amended effective May 1, 2015; _____.

In these rules, the term "guardian ad litem" includes lay and attorney guardians ad litem.

Counsel may be provided at public expense for indigent parties under N.D.C.C. § 27-20-26.

Subdivision (a) was amended, effective May 1, 2015, to clarify that issuance of a summons and the child's presence at a hearing is not required in a continued foster care matter under N.D.C.C. § 27-20-30.1.

Subdivision (d) was amended, effective May 1, 2015, to clarify that the child may waive service in a continued foster care matter under N.D.C.C. § 27-20-30.1. Continued foster case matters involve children over the age of 18 who can legally act on their own behalf.

Rule 5 was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Juvenile Policy Board Minutes of September 5, 2014, pages 3-4; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 24, 2020, pages 4-5; January 29-30, 2015, page 8; September 25-26, 2014, page 6: May 21-22, 2009.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 27-20-22.

CONSIDERED: N.D.C.C. ch. 31-15, §§ 27-20-26, 27-20-30.1.

RULE 14. MOTIONS

(a) In General.

(1) Requirements. Every motion must be in writing, state with particularity the grounds, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

(2) Motions Allowed.

(A) A party may raise by motion any defense, objection, or request that the court can determine without an adjudication of the general issue.

(B) A party may bring a motion to dismiss the petition upon any of the following grounds:

(i) lack of jurisdiction over the subject matter;

(ii) lack of jurisdiction over the child; or

(iii) failure of the petition to state facts which, if proven, establish a prima facie case to support the grounds set forth in the petition.

(C) A party may move to modify or vacate an order under Rule 16.

(b) ~~Service~~ Submission of Motion and Response; Request for Oral Argument.

(1) How Made. Every written motion along with notice of motion and any supporting briefs and ~~affidavits~~ declarations must be served by the moving party under Rule 7. A written motion is considered submitted to the court unless a party requests oral argument.

(2) Request for Oral Argument. Requests for oral argument may be submitted in

the notice of motion or the response to motion. A timely request for oral argument must be granted. The party requesting oral argument must secure a time for the oral argument and serve notice on all parties.

(2) Time. ~~Any~~ A written motion ~~required by this rule to be served~~, along with any supporting briefs and ~~affidavits~~ declarations, must be served at least three days before ~~it is to be heard~~ oral argument unless the court for good cause shown permits a motion to be made and served less than three days before ~~it is to be heard~~ oral argument. If oral argument is requested and scheduled, any response must be served at least 24 hours prior to oral argument. If oral argument is not requested by the movant, a response and any request for oral argument must be served by the respondent within three days of service of the motion. The filing and service of a motion does not extend the time requirements for resolution of the matter.

(c) Motion Deadline. The court may set a deadline for the parties to make motions and may also ~~schedule a motion hearing~~ set a time for oral arguments.

(d) Ruling on a Motion. The court must decide every motion before adjudication of the matter unless it finds good cause to defer a ruling. The court must not defer ruling on a motion if the deferral will adversely affect a party's rights. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) Recording the Proceedings. A verbatim record must be made of all proceedings at ~~the motion hearing~~ oral arguments, including any findings of fact and conclusions of law made orally by the court.

EXPLANATORY NOTE

Rule 14 was adopted effective March 1, 2010. Amended effective _____.

This rule was amended, effective_____, to clarify the procedure for submitting a motion and requesting oral argument.

This rule was amended, effective_____, to delete the term "affidavit" and replace it with "declaration." This amendment was made in response to N.D.C.C. ch. 31-15, which allows anyone to make an unsworn declaration that has the same effect as a sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

SOURCES: Juvenile Policy Board Minutes of February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 24, 2020, pages 8-9.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 31-15.

CROSS REFERENCE: N.D.R.Juv.P. 7 (Service After Summons); N.D.R.Juv.P. 16 (Modification and Vacation of Orders); N.D.R.Ct. 3.2 (Motions).

RULE 16. MODIFICATION AND VACATION OF ORDERS

(a) Mandatory Vacation of Order. An order of the court must be set aside if:

(1) it appears it was obtained by fraud or mistake;

(2) the court lacked jurisdiction over a necessary party or of the subject matter; or

(3) newly discovered evidence so requires.

(b) Discretionary Modification.

(1) Except an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child.

(2) An order terminating parental rights and the parent and child relationship may be vacated by the court on motion of the parent if the child is not placed for adoption and the person having custody of the child consents in writing to the vacation of the decree.

(3) An order granting probation to a child found to be delinquent or unruly may be ~~revoked~~ reviewed on the ground that the conditions of probation have not been observed.

(c) Motion for Relief. Any party to the proceeding, the director of juvenile court or other person having supervision or legal custody of or an interest in the child may move the court for the relief provided in this rule. The motion must set forth in concise language the grounds on which relief is requested.

(d) Notice. Reasonable notice and an opportunity to be heard must be given to the child and the parent, guardian, or other custodian before the court may extend the duration of:

(1) an order committing a delinquent or unruly child to the division of juvenile services;

(2) an order placing a child in foster care; or

(3) an order placing a child in detention or shelter care.

(e) ~~Hearing~~ Oral Argument. After the motion is filed, the court ~~must set a hearing and cause~~ must grant a request for oral argument and require notice to be served on the parties. After ~~the hearing~~ oral argument, which may be informal, the court may deny or grant relief as the evidence warrants.

EXPLANATORY NOTE

Rule 16 was adopted effective March 1, 2010. Amended effective _____.

This rule was amended, effective _____, to clarify that the court must grant a request for oral argument and require notice to be served.

SOURCES: Juvenile Policy Board Minutes of February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 24, 2020, pages 8-9.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 27-20-37.

CROSS REFERENCE: N.D.R.Juv.P. 14 (Motions).

RULE 19. JUVENILE RECORDS

(a) Records Confidential.

(1) Juvenile court records are confidential and not open to inspection or release except as provided by N.D.C.C. § 27-20-51 and the rules of the supreme court.

(2) Disclosure of papers, reports, notes, files, or records may be restricted or authorized by court order, except that judge, referee or court personnel work material and notes may not be released to anyone under any circumstances.

(b) Disclosure of Records.

(1) In General. N.D.C.C. § 27-20-51(1) lists the persons and entities who may routinely inspect juvenile court files and records.

(2) Court Order. Upon written request or motion a judge or referee of the juvenile court may permit inspection or release of pertinent information of all or some portion of a court record to the persons and entities listed in N.D.C.C. § 27-20-51(2) and the following:

(A) persons or agencies conducting pertinent research studies;

(B) the victim or a member of the victim's immediate family on behalf of the victim or to an insurance company representing the victim;

(C) the military if a release of information has been signed by the subject of the petition or the parents of the subject if the child is under 18 years of age.

(3) Social Service Reports. Social service reports (960's) may be released under Rule 12 to attorneys representing the parties involved. Unless otherwise ordered by the

court, names of persons reporting the alleged incident must be deleted from the reports. See N.D.C.C. Section 50-25.1-11(1)(d).

(4) Statistical Information. Statistics and other general information which do not identify parties and which are generated in the normal cause of business may be released to any party, including the press. Requests for special reports or information must be forwarded to the State Court Administrator.

(5) Drug and Alcohol Treatment Records. Drug and alcohol treatment records within a file and which are confidential under 42 CFR Part 2 may not be disclosed unless:

(A) the person who is the subject of the records has signed a valid consent form authorizing disclosure;

(B) the court has found there is good cause for disclosure and has issued an authorizing order in accordance with 42 CFR Section 2.64 or 2.66, as applicable; or

(C) the court has issued an order authorizing disclosure in accordance with 42 CFR Section 2.63 or 2.65, as applicable.

For purposes of this paragraph, "disclosure" includes duplication of records permitted under Rule 19(c).

(6) Research. The Chief Justice may authorize the release of information from juvenile records for research purposes when the Supreme Court has requested such research, or a research project has been proposed, and the Chief Justice has determined that the research results may be used to improve court response to issues of delinquency, deprivation, minor guardianship, or termination of parental rights.

(c) Copying Records.

(1) Documents not original to the juvenile court may not be duplicated except:

(A) for purposes of conducting a hearing, documents may be duplicated but must be returned to the court after the hearing; or

(B) upon written approval of the agency which originally created the document; or

(C) upon order of the court.

(2) Documents generated by the juvenile court may be duplicated as appropriate to meet the informational needs of the entities or persons listed in N.D.C.C. § 27-20-51(1) or any other person or entity considered appropriate by the court.

(d) Early Destruction of Records. A party who is the subject of a delinquency or unruly proceeding may petition the court for early destruction of records. The state's attorney of the county in which the records are held must be notified of the request. The judge may order the early destruction upon a showing of good cause to destroy the records by the party. The records may not be destroyed if it is known that the subject of the motion has criminal charges pending before any other court.

EXPLANATORY NOTE

Rule 19 took effect May 1, 2015. Amended effective_____.

Rule 19 consolidates provisions previously contained in the Unified Judicial System Policy Manual. Subdivisions (a), (b) and (c) are derived from Policy 402 on Juvenile Court Records. Subdivision (d) is derived from Policy 403 on Expungement.

Paragraph (b)(6) was added, effective_____, to allow the Chief Justice to authorize the release of information from juvenile records for research purposes.

SOURCES: Juvenile Policy Board Minutes of September 5, 2014, page 5. Joint Procedure Committee Minutes of April 24, 2020, pages 9-10; January 29-30, 2015, page 8; September 25-26, 2014, pages 18-20.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. § 27-20-51; ch 54-23.4; § 50-25.1-11(1)(d).

CROSS REFERENCE: N.D.R.Juv.P. 12 (Discovery); N.D.Sup.Ct.Admin.R. 41 (Access to Court Records).