

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

NOTICE OF COMMENT

Supreme Court No. 20210234

**Proposed Amendments to the North Dakota
Rules of Appellate Procedure Regarding Appendices**

[¶1] The Court considered amendments to North Dakota Rules of Appellate Procedure 21, 25, 28, 30, 31, and 32, primarily regarding elimination of appendices for most documents filed in the Supreme Court. The proposal was referred to the Joint Procedure Committee. The committee was also asked to consider filing transcripts for appeals into the district court record rather than in the Supreme Court. The Court asked the committee to suggest additional appropriate amendments if it recommended the change. On October 12, 2021, the committee returned its recommendations for amendments to North Dakota Rules of Appellate Procedure 10, 21, 25, 27, 28, 29, 30, 31, 32, and 40, including filing transcripts into the district court record. The proposal as well as the committee's recommendations are available at <https://www.ndcourts.gov/supreme-court/dockets/20210234>. Individuals who do not have internet access may contact the Clerk of the Supreme Court to obtain a copy of the proposals.

[¶2] The proposed amendments on which the Court is requesting comments are attached to this notice.

[¶3] **IT IS ORDERED** that any person wishing to comment on the proposed amendments 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 **Monday, November 29, 2021**.

[¶4] The Supreme Court of the State of North Dakota convened this 27th day of October, 2021, 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

RULE 10. THE RECORD ON APPEAL

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

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

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

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

(b) Order for Transcript of Proceeding.

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

(A) an electronic copy of the transcript in portable document format (PDF) ~~must be ordered for the supreme court~~ filing with the district court as part of the record;

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

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

(D) a transcript of any record of jury voir dire is not required, unless specifically

requested by a party; and

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

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

(A) the caption of the case;

(B) the date or dates of trial;

(C) the number of copies required; and

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

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

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

(c) Preparation of Transcript.

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

53 (2) Submission of Transcript.

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

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

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

60 (iii) an electronic copy of the transcript in portable document format (PDF) must
61 be ~~electronically transmitted to the clerk of the supreme court~~ filed with the district court
62 as part of the record. All electronic transcripts must contain in a single file all the
63 information contained in the paper transcript, including the cover, table of contents, and
64 certifications, in the same order as in the paper transcript. The electronic transcript must
65 include fixed line number and page numbers corresponding to those in the paper
66 transcript.

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

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

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

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

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

(d) Extension of Time.

(1) Good Cause. If the person preparing the transcript is unable to complete and file the transcript within 60 days after the order for transcript is electronically transmitted

to the preparer, the district court for good cause shown may extend the time for completion of the transcript. If preparation of the transcript has been suspended for failure of any party to make a timely advance payment upon demand, the district court for good cause shown by the party responsible for the delay, may extend the time for completion of the transcript, on such terms as the court may order.

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

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

- (1) lines must be numbered on the left margin;
- (2) each page may not contain more than 27 lines or less than 25 lines;
- (3) the left margin may not be more than 1 3/4 inches wide;
- (4) the right margin may not be more than 3/8 inches wide;
- (5) each question and answer must begin on a new line;
- (6) an indentation for a new speaker or paragraph may not be more than 10 spaces

from the left margin;

(7) each volume must be indexed as to every witness and exhibit;

(8) each page must be numbered consecutively;

(9) the accuracy of the transcript must be certified by the person preparing the transcript.

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

(g) Agreed Statement as Record on Appeal. In place of the record on appeal as defined in subdivision (a), the parties may prepare, sign, and file with the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the supreme court's resolution of the issues. If the statement is truthful, it, together with any additions that the district court may consider necessary to a full presentation of the issues on appeal, must be approved by the district court and must then be certified to the supreme court as the record on

133 appeal. The clerk of district court must then file the statement with the supreme court
134 within the time provided by Rule 11.

135 (h) Correction or Modification of Record.

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

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

142 (A) on stipulation of the parties; or

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

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

148 EXPLANATORY NOTE

149 Rule 10 was amended, effective 1978; March 1, 1986; January 1, 1995; March 1,
150 1998; March 1, 1999; March 1, 2001; technical amendments effective August 1, 2001;
151 March 1, 2003; March 1, 2004; March 1, 2005; March 1, 2008; March 1, 2011; October
152 1, 2014; March 1, 2020;_____.

153 Rule 10 was amended, effective January 1, 1995. The amendment allows a
154 transcript to be prepared and certified from an electronic recording by someone other than

155 the operator of recording equipment or a court reporter.

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

159 Rule 10 was amended, effective _____, to require the transcript to be filed
160 with the district court as part of the record.

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

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

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

170 Paragraph (b)(2) was amended, effective March 1, 2020, to require a party to
171 designate how many electronic or paper copies of the transcript are to be prepared and
172 identify who is to receive which type of copy.

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

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

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

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

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

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

Rule 10 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 28, 2018, pages 2-5; September 26, 2013, pages 16-20; April 29-30, 2010, page 20; January 25, 2007, page 16; January 30-31, 2003, pages 3-4; September 26-27, 2002, pages 14-15; April 26-27, 2001, pages 8-9; January 27-28, 2000, pages 9-12; September 23-24, 1999, pages 19-21; January 30, 1997, pages 9-10; September 26-27, 1996, page 18; April 28-29, 1994, pages 3-4; January 27-28, 1994, page 18; September 23-24, 1993, pages 20-21; March 28-29, 1985, pages 13-14; November 29, 1984, pages 5-6; May 25-26, 1978, pages 7-8; March 16-17, 1978, pages 1, 2, 9-13; January 12-13, 1978, pages 14-15; October 27-28, 1977, pages 2-3; September 15-16, 1977, pages 5-8, 16-18; June 2-3, 1977, pages 2-4. Fed.R.App.P. 10.

199 STATUTES AFFECTED:

200 SUPERSEDED: N.D.C.C. §§ 28-18-04, 28-18-05, 28-18-06, 28-18-07, 28-18-08,

201 28-27-07, 28-27-33, 29-23-01, 29-23-02, 29-23-03, 29-23-04, 29-23-08, 29-23-09.

202 CROSS REFERENCE: N.D.R.App.P. 3 (Appeal as of Right--How Taken),

203 N.D.R.App.P. 7 (Bond for Costs on Appeal in Civil Cases), N.D.R.App.P. 11

204 (Transmission and Filing of the Record), and N.D.R.App.P. 12 (Docketing the Appeal).

RULE 21. WRITS

(a) Petition, Filing, and Service.

(1) A party seeking a writ must file a petition with the clerk of the supreme court and serve the petition on all parties to the proceeding in the district court. ~~The~~ If requesting supervision, 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 supporting documents. Supporting documents include a copy of any order or opinion and other, parts of the record, or other documents that are necessary to understand the matters set forth in the petition.

(A) If a petition is supported by briefs, 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)~~ attached to the petition as exhibits. Any party opposing the petition may refer to an exhibit by setting forth in parentheses the capital letter "E" followed by the page number of the item in the petition followed by a colon and the specific line or paragraph where the information referred to is located, for example (E6:12:¶3).

(b) Action; Response to Petition; Briefs.

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

(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 must be filed. 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; November 1, 2020; March 1, 2021;_____.

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

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.

Paragraph (a)(3) was amended, effective _____, to clarify what supporting material should accompany a petition and to require that supporting material be attached as an exhibit to the petition.

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 (c) was amended, effective November 1, 2020, to require an original of the petition to be filed when filing is by mail or third party commercial carrier.

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 March 1, 2021, 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 _____; September 24, 2020, pages 2-3; 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~~ References to the Record); 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, or 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). 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.

(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.

89 (C) Documents served electronically may be served by facsimile only if e-mail
90 service is not possible and only if prior permission to serve by facsimile is granted by the
91 recipient.

92 (D) If a recipient cannot accept electronic service of a document, service under
93 another means specified by N.D.R.App.P. 25(c) is required.

94 (d) Proof of Service. A document presented for filing must contain an
95 acknowledgment of service by the person served or proof of service by the person who
96 made service. Proof of service may appear on or be affixed to the document filed. The
97 clerk may permit a document to be filed without acknowledgment or proof of service but
98 must require acknowledgment or proof of service to be filed promptly.

99 EXPLANATORY NOTE

100 Rule 25 was amended, effective January 1, 1988; on an emergency basis,
101 September 5, 1990; on an emergency basis, November 16, 1994; March 1, 1996; March 1,
102 1999; March 1, 2003; March 1, 2008; March 1, 2011; October 1, 2014; March 1,
103 2019;_____.

104 This rule is derived from Fed.R.App.P. 25. Rule 25 was amended, effective March
105 1, 1999, to allow the use of a third-party commercial carrier as an alternative to the Postal
106 Service. The phrase “commercial carrier” is not intended to encompass electronic
107 delivery services.

108 Subdivision (a) provides documents are not considered filed until they are received
109 by the clerk of the supreme court. Briefs, ~~appendices, transcripts,~~ and petitions for
110 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 most 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 (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 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.”

Rule 25 was amended, effective _____, to remove references to the appendix.

SOURCES: Joint Procedure Committee Minutes of _____;
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, 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 a motion must comply with the requirements of Rule 25, if applicable, and Rule 32. If filed by mail or third-party commercial carrier, one copy of all documents relating to a motion must be filed with the original motion. 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; November 1, 2020; March 1, 2021.

This rule is taken from Fed.R.App.P. 27. It contemplates that most procedural

45 matters will be determined by a single justice of the court.

46 Subdivision (b) was amended, effective March 1, 2011, to increase the time for a
47 party to respond to a motion from 10 to 14 days.

48 Subdivision (e) was amended, effective October 1, 2014, to conform the rule to
49 electronic filing.

50 Subdivision (e) was amended, effective November 1, 2020, to require one copy of
51 the motion and motion documents to be filed when filing by mail or third-party
52 commercial carrier.

53 Subdivision (f) was adopted, effective March 1, 1986.

54 Rule 27 was revised, effective March 1, 2003. The language and organization of
55 the rule were changed to make the rule more easily understood and to make style and
56 terminology consistent throughout the rules.

57 Rule 27 was amended, effective October 1, 2014, to replace “paper” with
58 “document.”

59 Rule 27 was amended, effective March 1, 2021, to delete the term “affidavit” and replace
60 it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-15,
61 which allows anyone to make an unsworn declaration that has the same effect as a sworn
62 declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form for an
63 unsworn declaration.

64 SOURCES: Supreme Court Conference Minutes of September 10, 1985. Joint
65 Procedure Committee Minutes of September 24, 2020, pages 2-3; April 24, 2020, pages
66 4-5; September 26, 2013, page 24-25; April 29-30, 2010, page 20; November 29, 1984,

67 page 2; May 25-26, 1978, pages 12-13. Fed.R.App.P. 27.

68 STATUTES AFFECTED:

69 SUPERSEDED: N.D.C.C. § 29-28-20.

70 CONSIDERED; N.D.C.C. ch. 31-15.

71 CROSS REFERENCE: N.D.R.App.P. 32 (Form of Briefs, ~~Appendices~~, and Other

72 Documents).

RULE 28. BRIEFS

(a) Form of Briefs. All briefs must comply with Rule 25 and Rule 32.

(b) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a table of contents, with paragraph references;

(2) a table of authorities--cases (alphabetically arranged), statutes, and other authorities--with references to the paragraphs in the brief where they are cited;

(3) in an application for the exercise of original jurisdiction, a concise statement of the grounds on which the jurisdiction of the supreme court is invoked, including citations of authorities;

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below;

(6) a statement of the facts relevant to the issues submitted for review, which identifies facts in dispute and includes appropriate references to the record (see Rule 28(f));

(7) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the

discussion of the issues); and

(C) if the appeal is from a judgment ordered under N.D.R.Civ.P. 54(b), whether the certification was appropriate; and

(D) a short conclusion stating the precise relief sought.

(c) Appellee's Brief. The appellee's brief must conform to the requirements of subdivision (b), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

(d) Reply Brief. The appellant may file a single brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with paragraph references, and a table of authorities--cases (alphabetically arranged), statutes, and other authorities--with references to the paragraphs in the reply brief where they are cited.

(e) References to Parties. Except as required under Rule 14, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the purchaser."

(f) References to the Record. References to ~~the parts of the record~~ must be made as

~~provided by Rule 30, contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed or if references are made in the briefs to parts of the record not reproduced in the appendix, the references must be to the docket index number of that part of the record. A party referring to evidence for which admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.~~

(g) Reproduction of Statutes, Rules, Regulations, and Other Sources. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end of the brief.

(h) Oral Arguments Requested. Any party who desires oral argument must place the words "ORAL ARGUMENT REQUESTED" conspicuously on the cover page of the appellant's, appellee's or cross-appellee's reply brief. Any party requesting oral argument must include in their brief a short statement explaining why oral argument would be helpful to the court.

(i) Briefs in a Case Involving a Cross-Appeal.

(1) An appellee and cross-appellant must file a single brief at the time the appellee's brief is due. This brief must contain the issues and argument involved in the cross-appeal as well as the answer to the appellant's brief.

(2) The appellant's answer to the cross-appeal must be included in the reply brief, but without duplication of statements, arguments, or authorities contained in the appellant's principal brief. To avoid duplication, references may be made to the appropriate portions of the appellant's principal brief.

(3) The cross-appellant may file a reply brief confined strictly to the arguments raised in the cross-appeal. This brief is due within 14 days after service of the appellant's reply brief; however, if there is less than 14 days before oral argument, the reply brief must be filed at least 5 days before argument.

(j) Briefs In a Case Involving Multiple Parties. Any number of parties may join in a single brief or adopt by reference any part of another's brief. Parties may similarly join in reply briefs.

(k) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed--or after oral argument but before decision--a party may promptly advise the court by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

(l) Requirements. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant or immaterial matters.

EXPLANATORY NOTE

Rule 28 was amended, effective March 1, 1986; January 1, 1988; March 1, 1994; March 1, 1996; March 1, 2003; March 1, 2008; March 1, 2010; March 1, 2011; October 1, 2014; December 1, 2014; March 1, 2019;_____.

Under paragraph (b) (4), each legal issue should be stated as a question of law sufficiently specific to allow the court to understand the precise issue presented.

Generalized statements such as, “Is the verdict supported by the evidence?” are not sufficient.

Under subdivision (f), references may be made to the docket number of parts of the record not reproduced as in the examples following: Answer, docket No. 2, p. 7; Motion for Judgment, docket No. 15, p. 2; Transcript p. 231.

Rule 28 was revised, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 28. 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. Substantive changes were made to conform this rule with the changes made in Rule 32.

Subdivision (a) was added to inform parties that all briefs must comply with Rule 32 and amended effective October 1, 2014, to conform the rule to electronic filing.

Subdivision (b):

Paragraphs (1) and (2) were amended, effective March 1, 2003, to separate the table of contents and the table of authorities into two distinct items in a brief.

Paragraphs (5) and (6) were amended, effective March 1, 2003, to require two separate statements--a statement of the case (the procedural history) and a statement of the facts.

Paragraph (7) was amended, effective March 1, 2010, to require a party to brief the appropriateness of a district court's grant of a certification under N.D.R.Civ.P. 54(b).

Subdivision (c) was amended, effective March 1, 2003, to conform the appellee's brief with the appellant's brief, and to expand the items that need not be included in the

111 appellee's brief.

112 Subdivision (e) was amended, effective March 1, 2019, to reference Rule 14,
113 which provides for identity protection for certain individuals.

114 Subdivivison (f) was amended, effective _____, to direct
115 parties to Rule 30 for instruction on citing to the record.

116 Subdivision (h) was amended, effective March 1, 2003, to delete length
117 limitations, which have been moved to Rule 32.

118 Subdivision (h) was amended, effective March 1, 2019, to require a party to
119 request oral argument and provide a short statement explaining why oral argument would
120 be helpful to the court.

121 Paragraph (i)(3) was amended, effective March 1, 2011, to change the deadline for
122 a cross-appellant to serve and file a reply brief if there is less than 14 days before
123 argument from 3 to 5 days before argument.

124 Subdivision (k) was added, effective March 1, 2003, to provide a means for parties
125 to inform the court of authorities that come to a party's attention after a brief has been
126 filed or after oral argument.

127 Subdivision (l) was added, effective March 1, 2008, to explain requirements for
128 briefs filed under Rule 28.

129 Rule 28 was amended, effective October 1, 2014, to replace “paper” with
130 “document.”

131 Rule 28 was amended, effective December 1, 2014, to require references to
132 paragraph numbers in tables of contents and tables of authorities.

SOURCES: Joint Procedure Committee Minutes of _____;
September 26, 2013, page 25; April 29-30, 2010, pages 23-24; September 24-25, 2009,
pages 11-12; April 26-27, 2007, pages 29-31; September 27-28, 2001, pages 7-9; April
27-28, 1995, pages 15-17; January 26-27, 1995, pages 6-7; September 29-30, 1994, pages
13-16; January 28-29, 1993, page 11; February 19-20, 1987, page 8; September 18-19,
1986, pages 15-16; November 30, 1984, pages 32-33; October 19, 1984, pages 23-26;
March 16-17, 1978, page 4; January 12-13, 1978, pages 15-18. Fed.R.App.P. 28.

STATUTES AFFECTED:

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

CROSS REFERENCE: N.D.R.App.P. 14 (Identity Protection), N.D.R.App.P. 25
(Filing and Service), N.D.R.App.P. 30 (~~Appendix~~ References to the Record),
N.D.R.App.P. 31 (Filing and Service of Briefs) and N.D.R.App.P. 32 (Form of Briefs;
~~Appendices~~, and Other Documents).

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) During Initial Consideration of a Case on the Merits.

(1) Applicability. This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) When Permitted. An amicus curiae brief may be filed only with leave of court or at the court's request. An amicus brief must be limited to issues raised on appeal by the parties.

(3) Motion for Leave to File. The motion may be accompanied by the proposed brief. The motion must state:

(A) the moving party's interest; and

(B) the reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) Contents and Form. An amicus brief must comply with Rule 25 and Rule 32. In addition to the requirements of Rule 25 and Rule 32, the cover must identify the party or parties supported, if any, and indicate whether the brief supports affirmance or reversal.

An amicus brief need not comply with Rule 28, but must include the following:

(A) a table of contents, with paragraph references;

(B) a table of authorities--cases (alphabetically arranged), statutes and other authorities--with references to the paragraphs in the brief where they are cited;

(C) a concise statement of the identity of the amicus curiae, and its interest in the case;

(D) a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person--other than the amicus curiae, its members, or its counsel--contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person; and

(iv) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(5) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief (see Rule 32(a)(8)). If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(6) Time for Filing. An amicus curiae must file its brief within the time allowed for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief within the time allowed for filing the appellant's principal brief. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(8) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(b) During Consideration of Whether to Grant Rehearing.

(1) Applicability. This Rule 29(b) governs amicus filings during a court's consideration of whether to grant rehearing.

(2) When Permitted. An amicus curiae may file a brief only by leave of court.

(3) Motion for Leave to File. Rule 29(a)(3) applies to a motion for leave.

(4) Contents, Form, and Length. Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) Time for Filing. An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

EXPLANATORY NOTE

Rule 29 was amended, effective March 1, 1996; March 1, 2003; March 21, 2007; March 1, 2012; October 1, 2014; December 1, 2014; March 1, 2018.

Rule 29 was revised, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 29. 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)(2) was amended, effective March 21, 2007. New language was added to clarify that an amicus brief may deal only with issues raised on appeal by the parties.

Paragraph (a)(3) was amended, effective March 1, 2003. New language in subparagraph (a)(3)(B) was added to require that the motion state the relevance of the matters asserted to the disposition of the case.

Paragraph (a)(4) was adopted, effective March 1, 2003, to eliminate any confusion as to contents and form and to require compliance with Rule 32, and amended effective October 1, 2014, to conform the rule to electronic filing.

Paragraph (a)(4) was amended, March 1, 2012, to include a new subparagraph (a)(4)(D) establishing disclosure requirements concerning the authorship and funding of an amicus brief. The disclosure requirements are derived from Fed.R.App.P. 29.

Paragraph (a)(4) was amended, effective December 1, 2014, to require references to paragraph numbers in the table of contents and table of authorities.

Paragraph (a)(5) was adopted, effective March 1, 2003, to establish a shorter page limit for an amicus brief than for a party's principal brief. The rationale for this limitation is that an amicus brief is supplemental--it need not address all issues or facets of a case, but only matters not adequately addressed by a party.

Paragraph (a)(7) was adopted, effective March 1, 2003, to prohibit the filing of a reply brief by an amicus curiae without the permission of the court.

Subdivision (b) was adopted, effective March 1, 2018, to create a procedure for filing an amicus brief supporting or opposing rehearing.

SOURCES: Joint Procedure Committee Minutes of April 27, 2017, pages 22-23; September 26, 2013, page 25; April 28-29, 2011, page 26; September 27-28, 2001, pages 19-22; September 29-30, 1994, page 16; May 25-26, 1978, pages 13-14. Fed.R.App.P. 29.

89 CROSS REFERENCE: N.D.R.App.P. 32 (Form of Briefs, ~~Appendices~~, and Other
90 Documents).

RULE 30. ~~APPENDIX TO THE BRIEFS~~ REFERENCES TO THE RECORD

~~(a) Appellant's Responsibility.~~

~~(1) Contents of the Appendix. Only items in the record may be included in the appendix. The author's signature on the brief, under Rule 32, certifies compliance with this rule. The appellant must prepare and file an appendix to the briefs containing only the following relevant portions of the lower court record:~~

~~(A) the docket sheet of the lower court, and agency docket sheet when an appeal is taken under the Administrative Agencies Practice Act;~~

~~(B) the indictment, information, or complaint, as amended;~~

~~(C) the answer, counterclaim, cross-claim, and replies;~~

~~(D) parts of any pre-trial order relevant to the issues on appeal;~~

~~(E) any supporting memorandum of decision, findings of fact and conclusions of law filed by the court;~~

~~(F) any supporting reasoning, findings of fact or conclusions of law delivered orally by the court;~~

~~(G) the judgment, order, or decision in question;~~

~~(H) any other orders to be reviewed;~~

~~(I) the instruction in question, if the correctness of a jury instruction is in issue, and any other relevant part of the jury charge;~~

~~(J) any other relevant parts of the record, including portions of the transcript, to which the particular attention of the court is invited; and~~

23 ~~(K) the notice of appeal.~~

24 ~~(2) Excluded Material. Except for relevant short transcripts or short excerpts~~
25 ~~showing the court's reasoning, district court transcripts filed in electronic form under Rule~~
26 ~~10(c) may not be included in an appendix. District court briefs of the parties may not be~~
27 ~~included in the appendix unless they have independent relevance. Parts of the record may~~
28 ~~be relied on by the court or the parties even though not included in the appendix.~~

29 ~~(3) Time to File; Number of Copies. If filed by mail or third-party commercial~~
30 ~~carrier and unless filing is deferred under Rule 30(c), the appellant must file one copy of~~
31 ~~the appendix with the brief and must serve one copy on counsel for each party separately~~
32 ~~represented. If filed electronically and unless filing is deferred under Rule 30(c), the~~
33 ~~appellant must file one electronic copy of the appendix with the brief and must serve one~~
34 ~~copy on counsel for each party separately represented. The court may in a particular case~~
35 ~~require the filing or service of a different number.~~

36 ~~(b) Option of Appellee or Cross-Appellant to Serve and File Appendix; Cost of~~
37 ~~Producing. The parties are encouraged to agree as to the contents of a single appendix. If~~
38 ~~an appellee or cross-appellant considers it necessary to direct the attention of the court to~~
39 ~~parts of the record not included in the appellant's appendix, a separate appendix may be~~
40 ~~served and filed with the appellee's brief. If an appellee or cross-appellant prepares an~~
41 ~~appendix and it is filed by mail or third-party commercial carrier, one copy must be filed~~
42 ~~with the clerk, and one copy must be served on counsel for each party separately~~
43 ~~represented, unless the court by rule or order directs otherwise. If an appellee or~~
44 ~~cross-appellant prepares an appendix and it is filed electronically, one electronic copy~~

45 ~~must be filed with the clerk, and one copy must be served on counsel for each party~~
46 ~~separately represented, unless the court by rule or order directs otherwise. Only items~~
47 ~~specified in subdivision (a) that have not been included in the appellant's appendix may~~
48 ~~be included in the appellee's or cross-appellant's appendix.~~

49 ~~(c) Deferred Filing. The court, on motion, may defer preparation of the appendix~~
50 ~~until after service and filing of the appellee's brief. If a deferred appendix is authorized,~~
51 ~~references in the briefs must be to the docket number for the parts of the record involved.~~
52 ~~If preparation and filing of the appendix is thus deferred, the appellant must prepare the~~
53 ~~appendix. The appendix must contain the documents required under Rule 30(a) and other~~
54 ~~parts of the record cited in the appellant's or appellee's brief. The appendix must be served~~
55 ~~and filed within 14 days after service of the appellee's brief.~~

56 ~~(d) Format of the Appendix. The appendix must begin with a table of contents~~
57 ~~identifying the page at which each part begins. The table of contents must be arranged in~~
58 ~~the same order as parts of the record appear in the appendix. The docket sheet of the~~
59 ~~lower court must immediately follow the table of contents. The remainder of the appendix~~
60 ~~must be arranged in the same order as the docket entries. When pages from the transcript~~
61 ~~of proceedings are placed in the appendix, the table of contents must indicate the~~
62 ~~transcript page numbers in brackets. Immaterial formal matters (captions, subscriptions,~~
63 ~~acknowledgments, etc.) should be omitted. The appendix may be prepared with~~
64 ~~double-sided pages. The appendix must be separately bound. An electronically filed~~
65 ~~appendix must comply with Rule 25.~~

66 (a) In General. In any document submitted to the supreme court, references to

evidence or other parts of the record must include a citation to a register of actions index number or to the location in the recording where such evidence or other material appears. The reference must include, either in the document text or the citation itself, information identifying the item, for example “Statement of John Doe.”

(b) Form of Citation.

(1) Reference to any material that is contained in an item in the record and that is listed under a register of actions index number, including transcripts, must be made by setting forth in parentheses the capital letter “R” followed by the index number of the item followed by a colon and the specific page within the item where the information referred to is located, for example (R156:12). If applicable, paragraph or line numbers must be included after the page number, for example (R156:12:¶3) or (R156:12:3).

(2) References to a video or audio recording in the record must be made by identifying the recording and providing specific, time-coded locations of the relevant portions.

EXPLANATORY NOTE

Rule 30 was amended, effective September 1, 1983; January 1, 1988; March 1, 1994; March 1, 1996; March 1, 1998; March 1, 2003; March 1, 2005; March 1, 2011; October 1, 2014; November 1, 2020;_____.

~~The March 1, 1996 amendment eliminates the need to designate parts of the record for inclusion in the appendix. Each party may file an appendix as long as there is no duplication. However, the parties are encouraged to agree on the contents of a single appendix. More than one appendix should be filed only in those cases where an~~

89 ~~agreement as to the contents of the appendix cannot be reached.~~

90 ~~The cost of producing an appendix may not be taxed under Rule 39. A party~~
91 ~~should also be mindful that under Rule 13, the court may award appropriate sanctions.~~

92 ~~Rule 30 was revised, effective March 1, 2003, in response to the December 1,~~
93 ~~1998, amendments to Fed.R.App.P. 30. The language and organization of the rule were~~
94 ~~changed to make the rule more easily understood and to make style and terminology~~
95 ~~consistent throughout the rules.~~

96 ~~Subdivisions (a) and (b) were amended, effective November 1, 2020, to require~~
97 ~~one copy of the appendix to be filed when it is filed by mail or third-party commercial~~
98 ~~carrier.~~

99 ~~Paragraph (a)(1) was amended, effective March 1, 2011, to clarify that any~~
100 ~~supporting reasoning, findings of fact or conclusions of law delivered orally by the court~~
101 ~~must be included in the appendix. Oral pronouncements included in the appendix should~~
102 ~~be extracted from the transcript.~~

103 ~~Paragraph (a)(2) was amended, effective March 1, 2005, to restrict inclusion in an~~
104 ~~appendix of district court transcripts already filed electronically with the supreme court,~~
105 ~~except when a transcript excerpt shows the district court's reasoning.~~

106 ~~Paragraph (a)(3) and subdivisions (b) and (d) were amended, effective October 1,~~
107 ~~2014, to conform the rule to electronic filing.~~

108 ~~Subdivision (c) was amended, effective March 1, 2005, to decrease the time~~
109 ~~allowed for filing a deferred appendix from 21 days to 11 days after service of the~~
110 ~~appellee's brief.~~

Subdivision (c) was amended, March 1, 2011, to increase the time allowed for filing a deferred appendix from 11 to 14 days after service of the appellee's brief.

Rule 30 was amended, effective _____, to provide standards for references to the record in documents filed with the supreme court and to eliminate the requirement to prepare an appendix. The entire record is available to the supreme court for reference and examination. Material in the record is listed in the register of actions and specific items are identified by index numbers. Material in the register of actions is accessible to attorneys through the Odyssey secure public access system and to judges under the events tab of the Odyssey dashboard.

SOURCES: Joint Procedure Committee Minutes of _____; September 24, 2020, pages 2-3; September 26, 2013, page 25; April 29-30, 2010, page 20; January 24-25, 2002, pages 8-9; September 27-28, 2001, page 22; September 26-27, 1996, page 19; April 27-28, 1995, pages 4-5; January 26-27, 1995, pages 6-7; September 29-30, 1994, pages 14, 16-18; January 28-29, 1993, page 11; February 19-20, 1987, page 8; September 18-19, 1986, pages 8-10, 16-19; January 23, 1986, page 4; October 15-16, 1981, pages 2-5; May 25-26, 1978, pages 14-17; January 12-13, 1978, pages 19-20; September 15-16, 1977, pages 19-21. Rule 22, Rules of the 11th Circuit Court. Fed.R.App.P. 30.

CROSS REFERENCE: N.D.R.App.P. 10 (The Record on Appeal); N.D.R.App.P. 13 (Sanctions); N.D.R.App.P. 25 (Filing and Service); N.D.R.App.P. 31 (Serving and Filing Briefs); N.D.R.App.P. 32 (Form of Briefs, ~~Appendices~~, and Other Documents); N.D.R.App.P. 39 (Costs).

RULE 31. FILING AND SERVICE OF BRIEFS

(a) Time to Serve and File a Brief; Where Filed. The appellant must serve and file a brief within 40 days after the date on which the transcript is filed but, if no transcript is ordered, within 40 days after the notice of appeal is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief; however, if there is less than 14 days before oral argument the reply brief must be filed at least 5 days before argument. All briefs must be filed with the clerk of the supreme court.

(b) Number of Copies to Be Filed and Served.

(1) Each brief must be served and filed as follows:

(A) one electronic copy of each brief must be served on counsel for each party separately represented and on each self-represented party or prisoner;

(B) if a self-represented party or prisoner cannot accept electronic service, a paper copy of each brief must be served;

(C) one electronic copy of each brief must be filed with, or electronically transmitted to, the clerk of the supreme court; and

(D) for briefs filed in person, by mail or third-party commercial carrier, an original of each brief must be filed with the clerk of the supreme court.

(2) All electronic copies of briefs must comply with Rule 25(a)(3). If a paper brief is filed or served, it must contain all the parts of the electronic brief and be in the same order as in the electronic brief.

23 (c) Consequence of Failure to File. If an appellant fails to file a brief within the
24 time provided by this rule or within a time extended by the court, the court on its own
25 motion may dismiss the appeal or an appellee may move to dismiss the appeal. An
26 appellee who fails to file a brief will not be heard at oral argument.

27 EXPLANATORY NOTE

28 Rule 31 was amended, effective January 1, 1988; March 1, 1997; March 1, 1999;
29 March 1, 2001; technical amendments effective August 1, 2001; March 1, 2003; March 1,
30 2008; March 1, 2011; October 1, 2014; March 1, 2019; November 1, 2020.

31 Rule 31 was amended, effective March 1, 2003, in response to the December 1,
32 1998, amendments to Fed.R.App.P. 31. The language and organization of subdivisions (a)
33 and (c) were changed to make the rule more easily understood and to make terminology
34 and style consistent throughout the rules.

35 Subdivision (a) was amended, effective March 1, 2011, to change the deadline for
36 an appellant to serve and file a reply brief if there is less than 14 days before argument
37 from 3 to 5 days before argument.

38 Subdivision (b) was amended, effective March 1, 2008, to require that a copy of
39 each brief be served on each self-represented party. The subdivision was also amended to
40 update requirements for filing an electronic copy with paper briefs. Subdivision (b) was
41 amended, effective October 1, 2014, to conform the rule to electronic filing. All parties,
42 whether filing electronically or in paper, must file an electronic copy of the brief unless
43 the party certifies that the brief was not prepared on a computer or word processor.

44 Paragraphs (b)(1) and (b)(2) were amended, effective March 1, 2019, to eliminate

filing of a word processing version of a brief with the clerk of the supreme court and to clarify requirements for service on self-represented parties or prisoners.

Paragraph (b)(1) was amended, effective November 1, 2020, to require an original of each brief to be filed when filing is by mail or third-party commercial carrier.

Subdivision (c) was amended, effective March 1, 2008, to clarify extension and dismissal procedure.

Rule 31 was amended, effective October 1, 2014, to replace “supreme court clerk” with “clerk of the supreme court.”

SOURCES: Joint Procedure Committee Minutes of September 24, 2020, pages 2-3; September 26, 2013, pages 26-27; April 29-30, 2010, page 24; January 25, 2007, page 19; September 27-28, 2001, page 23; April 26-27, 2001, page 9; September 28-29, 1995, page 12; May 21-22, 1987, page 17; February 19-20, 1987, page 8; September 18-19, 1986, pages 2, 20; May 25-26, 1978, page 17; October 27-28, 1977, pages 6-7; September 15-16, 1977, pages 13-14. Fed.R.App.P. 31.

CROSS REFERENCE: N.D.R.App.P. 26(b) (Extending Time), N.D.R.App.P. 28 (Briefs), N.D.R.App.P. 30 (~~Appendix to the Briefs~~ References to the Record), N.D.R.App.P. 32 (Form of Briefs, ~~Appendices~~, and Other Documents).

RULE 32. FORM OF BRIEFS,~~APPENDICES~~, AND OTHER DOCUMENTS

(a) Form of a Brief.

(1) Reproduction.

(A) A brief must be typewritten, printed, or reproduced by any process that yields a clear black image on white paper. Only one side of a paper may be used.

(B) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. If filed electronically, documents must be submitted in the same form as if submitted by mail, by third-party commercial carrier, i.e. color. Notice to the clerk of the supreme court must be given of anything other than black and white printed documents.

(2) Cover. The cover of the appellant's brief must be blue; the appellee's red; an intervenor's or amicus curiae's green; a cross-appellee's and any reply brief gray. Covers of petitions for rehearing must be the same color as the petitioning party's principal brief. If the brief is filed electronically, the supreme court will affix the correct color cover. The front cover of a brief must contain:

(A) the number of the case;

(B) the name of the court;

(C) the title of the case (see Rule 3(d));

(D) the nature of the proceeding (e. g., Appeal from Summary Judgment) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed;

(F) the name, bar identification number, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound at the left in a secure manner that does not obscure the text and permits the brief to lie reasonably flat when open. If the brief is filed electronically, the supreme court will bind the brief.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 ½ by 11 inch paper. Margins must be at least one and one-half inch at the left and at least one inch on all other sides. Pages must be numbered at the bottom, either centered or at the right side. Page numbering must begin on the cover page with the arabic number 1 and continue consecutively to the end of the document.

(5) 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. Headings and footnotes may be single-spaced and must be in the same typeface as the text.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Paragraph Numbers. Paragraphs must be numbered using arabic numerals in briefs. Reference to material in any document that contains paragraph numbers must be to the paragraph number.

(8) Page Limitations.

(A) Page Limit. A principal brief may not exceed 38 pages, and a reply brief may not exceed 12 pages, excluding any addendum. Footnotes or endnotes must be included in

the page count.

(B) Page Limit for N.D.R.Civ.P. 54(b) Certification. An argument on the appropriateness of N.D.R.Civ.P. 54(b) certification may not exceed 5 pages. Page limits for Rule 54(b) certification are in addition to the limits set forth in (7)(A).

~~(b) Form of an Appendix. An appendix must comply with Rule 25 and paragraphs (a) (1), (2), (3), and (4), with the following exceptions:~~

- ~~(1) the cover of a separately bound appendix must be white;~~
 - ~~(2) an appendix may include a legible photocopy of any document found in the record;~~
 - ~~(3) pages in the appendix must be consecutively numbered beginning on the cover page with the arabic number 1;~~
 - ~~(4) an appendix may be prepared with double sided pages.~~
- ~~The appendix must be 8 ½ by 11 inches in size. Documents of a size other than 8 ½ by 11 inches may be included in the appendix but must be folded or placed in a file or folder within the 8 ½ by 11 inch appendix.~~

~~(c) Form of Other Documents.~~

(1) All paragraphs must be numbered in documents filed with the court except for exhibits, documents prepared before the action was commenced, or documents not prepared by the parties or court. Reference to material in any document that contains paragraph numbers must be to the paragraph number.

(2) Motion. Rule 27 governs motion content. The form of all motion documents must comply with the requirements of paragraph (c)(4) below.

(3) Petition for Rehearing. Rule 40 governs petition for rehearing content.

(4) Other Documents. Any other document must be reproduced in the manner prescribed by subdivision (a), with the following exceptions:

(A) a cover is not necessary if the caption and signature page together contain the information required by subdivision (a); and

(B) Paragraph (a)(8) does not apply.

~~(d)~~ (c) Non-compliance. Documents not in compliance with this rule will not be filed.

~~(e)~~ (d) Certificate of Compliance. A brief must include a certificate by the attorney, or a self-represented party, that the document complies with the page limitation. The person preparing the certificate must rely on the page count of the filed electronic document. The certificate must state the number of pages in the document. An inaccurate certification may subject the filer to sanctions.

EXPLANATORY NOTE

Rule 32 was amended, effective March 1, 1996; amended effective September 11, 1996, subject to comment; final adoption on October 23, 1996; amended effective August 1, 2001; March 1, 2003; March 1, 2007; March 1, 2008; March 1, 2010; March 1, 2013; October 1, 2014; March 1, 2017; March 1, 2018; March 1, 2019;_____.

Rule 32 was amended, effective September 11, 1996, with respect to the allowable characters per inch with proportionally spaced typeface in subparagraph (a)(5)(A).

Rule 32 was revised, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 32. The language and organization of the rule were

89 changed to make the rule more easily understood and to make style and terminology
90 consistent throughout the rules.

91 Paragraph (a)(2) was amended, effective March 1, 2007, to specify the cover color
92 for a petition for rehearing.

93 Paragraph (a)(3), effective March 1, 2003, requires a brief to be bound in a secure
94 manner, however, this is not intended to allow staples or slide-lock or slide-grip bindings.

95 Paragraphs (a)(6) and (a)(7), which include type style requirements and page and
96 type-volume limitations, were adopted, effective March 1, 2003. These limitations were
97 moved to this rule from Rule 28 and generally do not follow the federal format
98 requirements. As used in paragraph (a)(6), “plain, roman style” does not include
99 italicized, bold, or cursive type-styles.

100 Paragraph (a)(7) was amended, effective March 1, 2018, to specify that paragraphs
101 must be numbered using arabic numerals.

102 Paragraph (a)(8) was amended, effective March 1, 2013, to decrease the page and
103 type volume allowed in a primary brief and a response brief.

104 Paragraph (a)(8) was amended, effective March 1, 2019, to use only page counts
105 for filings.

106 Paragraph (a)(8), effective March 1, 2003, limits the length of a brief. A person
107 may rely on the word or line count of the word-processing system used to prepare the
108 brief.

109 Subparagraph (a)(8)(C) was adopted, effective March 1, 2010, to limit the length
110 of an argument on the appropriateness of N.D.R.Civ.P. 5(b) certification.

Subdivision (a) was amended, effective October 1, 2014, to conform the rule to electronic filing.

~~Paragraph (b)(2) was amended, March 1, 2017, to clarify that an appendix may include copies of documents found in the record.~~

~~Paragraph (b)(3), effective March 1, 2003, provides an exception to the size requirement for odd-sized documents in an appendix. This exception is intended to allow inclusion of technical or other documents, such as maps or charts, which may not be clear or legible if reduced to meet the size requirement.~~

Paragraph (c)(b)(2), was amended, effective March 1, 2008, to transfer length requirements for petitions for rehearing to Rule 40.

Subdivision (c)(b) was amended, effective October 1, 2014, to clarify that paragraph numbers are required in all documents submitted to the court unless a specified exception applies.

Subdivision (e) was amended, effective March 1, 2019, to require certification of the page count by filers.

Rule 32 was amended, effective October 1, 2014, to replace “supreme court clerk” with “clerk of the supreme court” and “paper” with “document.”

Rule 32 was amended, effective _____, to remove references to the appendix and retitle the rule.

SOURCES: Joint Procedure Committee Minutes of _____;
January 26-27, 2017, page 30; January 28-29, 2016, page 8; September 26, 2013, pages 27-28; January 26-27, 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29,

2011, page 18-20; September 24-25, 2009, pages 15-16; April 26-27, 2007, page 18;
January 25, 2007, page 19; September 22-23, 2005, page 27; January 24-25, 2002, pages
7-9; September 27-28, 2001, pages 23-25; April 26-27, 2001, page 9; April 27-28, 1995,
pages 15-17; May 25-26, 1978, pages 17-18; January 12-13, 1978, pages 20-22.
Fed.R.App.P. 32,3. 13(e) and 3. 31, ABA Standards Relating to Appellate Courts
(Approved Draft, 1977).

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 29-28-19.

CROSS REFERENCE: N.D.R.App.P. 27 (Motions); N.D.R.App.P. 28 (Briefs);
N.D.R.App.P. 29 (Brief of an Amicus Curiae); N.D.R.App.P. 30 (~~Appendix to the Briefs~~
References to the Record); N.D.R.App.P. 40 (Petition for Rehearing).

RULE 40. PETITION FOR REHEARING

(a) Time to File; Content; Answer; Action by Court if Granted.

(1) Time. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the court requests, no answer to a petition for rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request.

(4) Action by the Court. If a petition for rehearing is granted the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission;

(C) issue any other appropriate order.

(b) Form of Petition; Length. A petition for rehearing must comply in form with Rule 32. A petition for rehearing must contain all applicable items listed in Rule 28(b). A petition for rehearing may not exceed 10 pages, excluding any addendum. Footnotes or endnotes must be included in the page count.

(c) Service and Filing. Copies of a petition for rehearing must be served and filed as prescribed by Rule 25 and Rule 31(b).

EXPLANATORY NOTE

23 Rule 40 was amended, effective March 1, 2003; March 1, 2004; March 1, 2008;
24 March 1, 2013; October 1, 2014; March 1, 2019.

25 This rule is derived from Fed.R.App.P. 40.

26 Subdivision (b) was amended, effective March 1, 2003, to specify that a petition
27 for rehearing must comply with the requirements of Rule 32.

28 Subdivision (b) was amended, effective March 1, 2004, to specify that a petition
29 for rehearing must contain the elements specified in Rule 28(b) that apply to the given
30 petition. For example, a petition for rehearing that cites legal authorities must include a
31 table of authorities as described in Rule 28(b)(2).

32 Subdivision (b) was amended, effective March 1, 2008, to include length
33 requirements for a petition for rehearing.

34 Subdivision (b) was amended, effective March 1, 2013, to decrease the page and
35 type volume allowed in a petition for rehearing.

36 Subdivision (b) was amended, effective, March 1, 2019, to use only page counts
37 for filings.

38 Subdivision (c) was added, effective March 1, 2003, to clarify petition service and
39 filing requirements and amended effective October 1, 2014, to conform the rule to
40 electronic filing.

41 Rule 40 was amended, effective March 1, 2003, in response to the December 1, 1998,
42 amendments to Fed.R.App.P. 40. The language and organization of the rule were changed
43 to make the rule more easily understood and to make style and terminology consistent
44 throughout the rules.

SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 28; January 26-27, 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29, 2011, page 18-20; January 25, 2007, page 19; April 24-25, 2003, page 14; April 25-26, 2002, page 25; May 25-26, 1978, pages 19-20; March 16-17, 1978, pages 8-9. Fed.R.App.P. 40.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 28-27-30.

CROSS REFERENCE: N.D.R.App.P. 28 (Briefs); N.D.R.App.P. 31 (Filing and Service of Briefs); N.D.R.App.P. 32 (Form of Briefs, ~~Appendices~~, and Other Documents).