

## MINUTES OF MEETING

Joint Committee of the Judicial Council  
and the State Bar Association  
Joint Procedure Committee

October 27-28, 1977

### CALL TO ORDER

The meeting was called to order at 1:15 p.m., October 27, 1977, by Justice Paul M. Sand, Chairman.

### ATTENDANCE

#### Members Present:

Hon. Robert Vogel  
Hon. Eugene A. Burdick  
Hon. James H. O'Keefe  
Hon. Halvor L. Halvorson  
Hon. William S. Murray  
Mr. Leonard H. Bucklin  
Mr. Kent Higgins  
Mr. James L. Lamb  
Mr. LeRoy A. Loder  
Mr. David L. Peterson  
Mr. Calvin N. Rolfson

#### Members Absent:

Hon. Gerald G. Glaser  
Hon. Kirk Smith  
Hon. Larry Hatch  
Hon. R. C. Heinley  
Mr. Harry Pearce  
Mr. Jon M. Arntson  
Mr. Larry Kraft  
Mr. Timothy Q. Davies

#### Staff Present:

Joel W. Gilbertson  
Eveleen Klaudt

### APPROVAL OF MINUTES

Judge Burdick MOVED to approve the Minutes of the September 15-16, 1977, meeting as submitted. Judge Murray seconded the motion. Motion CARRIED.

#### PARALLEL RULE - COMMENCEMENT OF A CIVIL PROCEEDING

Judge Burdick MOVED that the Committee pursue the question of paralleling the Federal Rule on commencement of a civil action, and that the Staff Attorney be instructed to prepare a draft of such rule for consideration by the Committee. Mr. Rolfson seconded the motion. Motion CARRIED.

#### RULE VI - CERTIFICATE OF READINESS RULE

Judge Burdick noted that the Supreme Court has approved the Certificate of Readiness Rule for use in the Fifth Judicial District.

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Justice Vogel MOVED to defer action by the Committee on the Certificate of Readiness Rule for one year, after which all the Judicial Districts should be asked for their comments. Mr. Bucklin seconded the motion. Motion CARRIED.

#### RULE 10 - COMMENTARY

Mr. Peterson MOVED to adopt the commentary to Rule 10 with style changes, and with the following additional language: "Inexcusable delay in making satisfactory financial arrangements for the transcript is grounds for a motion to dismiss the appeal." Mr. Loder seconded the motion. Motion CARRIED.

This Rule abolishes the former concepts of the "judgment roll" and the "settled statement of the case." In the ordinary case, no formal approval of the transcript by the trial court or the parties is necessary. In cases in which part of the proceedings is transcribed, the appellant must serve a statement of the issues he intends to present on appeal. But this requirement is solely for the purpose of affording the appellee an opportunity to determine whether the partial transcript will be adequate for determination of the issues presented by the appeal. Such a statement is not equivalent to an assignment of errors, which is no longer required under these rules, and the statement does not limit the issues on appeal. An appellee who is misled by the statement of issues in designating portions of the record, or any party claiming error in the record, may seek relief under subdivision (f).

Numerous changes to Rule 10 were made in 1978. Basically the changes are intended to (1) specify the duties of counsel and reporters in the area of preparation of the record, and (2) shorten the time period between the filing of the notice of appeal and the filing of the record.

In order to move toward achievement of these goals, three notable changes were made in subdivision (b). The first change is that the complete or partial transcript must be ordered by the appellant within five days after the notice of appeal is filed. If a partial transcript is ordered by the appellant, the appellee has ten days to designate additional parts to the transcript. The appellant then has the duty to order these additional parts. If the additional parts are not ordered by the appellant within five days, the appellee may either order the additional parts from the reporter or apply to the trial court for an order requiring the appellant to do so. Herein lies the second major departure from present practice. The final change is not of major proportions, but specifies the information to be included by a party when a transcript is ordered.

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Mr. Rolfson MOVED that the commentary to Rule 11, NDRAppP, as amended, be adopted. Mr. Higgins seconded the motion. Motion CARRIED.

#### RULE 11, NDRAppP

#### COMMENTARY

Rule 11, as amended, extends the time within which the record must be transmitted to the Supreme Court. In order to aid the attorneys in preparing briefs, the clerk of the trial court retains the record for a maximum of 70 days after the transcript is filed, but if no transcript is ordered, the clerk shall transmit the record 70 days after the notice of appeal is filed. If the briefs are completed before the time period required by Rule 31, the parties may stipulate that the record be sent to the Supreme Court earlier. The Supreme Court upon motion may extend or reduce the time for transmitting the record. Subdivisions (g) and (h) were formerly found in Rule 12.

#### RULE 31 - NDRAppP

Mr. Higgins MOVED that the Committee reconsider its action in adopting Rule 31, NDRAppP. Mr. Rolfson seconded the motion. Motion CARRIED.

Mr. Higgins MOVED that Rule 31 be amended as follows: In the first sentence, after the word "filed", insert: ",but, if no transcript is ordered, within 40 days after the notice of appeal is filed." Mr. Bucklin seconded the motion. Motion CARRIED.

Mr. Higgins MOVED that Rule 31, NDRAppP, be adopted as amended. Mr. Rolfson seconded the motion. Motion CARRIED.

#### RULE 31

(a) Time for Serving and Filing Briefs; Where Filed. The appellant shall serve and file his 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 shall serve and file his brief within

30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. All briefs shall be filed with the clerk of the supreme court.

(b) Number of copies to be filed and served. Seven copies and an original on each brief shall be filed with the clerk of the supreme court unless the

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court by order in a particular case shall permit a lesser number, and one copy shall be served on counsel for each party separately represented.

#### RULE 12 - NDRAppP

Mr. Bucklin MOVED that in line 11 of the draft of the proposed amendment to Rule 12 that the word "record" be restored. Mr. Higgins seconded the motion. Motion CARRIED.

Judge Burdick MOVED that Rule 12 be amended: line 11, strike the word "may"; line 12, after the word "shown" insert the word "may"; line 15, strike the word "such" and insert the word "the"; line 17 strike the word "shall" and insert the word "must"; line 27 strike the word "shall" and change "fail" to "fails", line 28 strike the word "the" and insert the word "any"; line 30 strike the word "shall" and insert the word "must"; line 35 strike the words "of such" and insert the words, "after the"; line 38 strike the words "shall not be" and insert the words "is not". Mr. Bucklin seconded the motion. Motion CARRIED.

Judge Burdick MOVED that the Committee adopt Rule 12, as amended. Mr. Higgins seconded the motion. Motion CARRIED.

#### RULE 12, NDRAppP

#### DOCKETING THE APPEAL

(a) Docketing the Appeal. The appellant shall deposit the docket fee with the clerk of the trial court at the time the notice of appeal is filed. Upon receipt of the docket fee, the clerk of the supreme court shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of a party or at the time of the filing of the record. The supreme court upon motion for cause shown may enlarge the time for docketing the appeal or permit the appeal to be docketed out of time. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, his name, identified as appellant, must be added to the title.

(b) Dismissal for Failure of Appellant to Docket Appeal. If the appellant fails to pay any docket fee if a docket fee is required, any appellee may file a motion in the supreme court to dismiss the appeal. The motion must be supported by a certificate of a clerk of the trial court showing the date and substance of the judgment or order from which the appeal is taken, the expiration date of any order extending

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the time for transmitting the record, and by proof of service. The appellant may respond within 14 days after the service. The clerk of the supreme court shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment of the docket fee, but the appellant is not permitted to respond without payment of the fee unless he is otherwise exempt therefrom.

#### RULE 12 - NDRAppP - COMMENTARY

Mr. Higgins MOVED that the Committee adopt the proposed amendments to the commentary to Rule 12. Mr. Peterson seconded the motion. Motion CARRIED.

#### RULE 12, NDRAppP

#### COMMENTARY

Under Rule 12(a), as amended, the docket fee must be deposited by the appellant in the trial court with the notice of appeal. To eliminate administrative problems for the clerk of the trial court, a check or money order in the amount of the docket fee should be made payable to the clerk of the Supreme Court.

It should be noted that Rule 7 requires that the bond for costs or equivalent security also be filed with the notice of appeal in civil cases.

Although payment of the docket fee is not "jurisdictional" and does not affect the validity of the appeal [see Rule 3(a)], subdivision (b) asserts that the appeal may be dismissed by the Supreme Court if the requirements of this Rule are not followed.

The former subdivision (b), relating to filing the record, is now found in Rule 11(b). Parts of former subdivision (c) are now found in Rule 11(h).

#### RULE 11 - NDRAppP - COMMENTARY

Mr. Peterson MOVED to reconsider the Committee's action in adopting the commentary to Rule 11. Mr. Higgins seconded the motion. Motion CARRIED.

Mr. Peterson MOVED to insert the following language deleted from the commentary on Rule 12: "The duty of transmission of the record to the Supreme Court is imposed upon the clerk of the trial court. However, as with the existing practice, the appellant's counsel will have the primary responsibility for assuring that there is timely transmission of the record." Mr. Peterson further MOVED that the Staff Attorney indicate that failure to cause timely transmission of the record may

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result in dismissal of the appeal, with cases supporting this proposition. Mr. Higgins seconded the motion. Motion CARRIED.

Mr. Bucklin MOVED that the commentary to Rule 11 be adopted, as amended. Mr. Loder seconded the motion. Motion CARRIED.

### COMMENTARY

As amended, Rule 11 extends the time within which the record must be transmitted to the Supreme Court. In order to aid the attorneys in preparing briefs, the clerk of the trial court retains the record for a maximum of 70 days after the transcript is filed. If no transcript is ordered, the clerk shall transmit the record 70 days after the notice of appeal is filed. If the briefs are completed before the time periods required in Rule 31, the parties may stipulate that the record be sent to the Supreme Court earlier. The Supreme Court upon motion may extend or reduce the time for transmitting the record.

Subdivisions (g) and (h) were formerly found in Rule 12. The duty of transmission of the record to the Supreme Court is imposed upon the clerk of the trial court. However, as with existing practice, the appellant's counsel will have the primary responsibility for assuring that there is timely transmission of the record. Failure of the appellant to cause timely transmission of the record may result in dismissal of the appeal [see, e.g., *Community Memorial Hospital v. Olson*, 246 N.W.2d 91 (N.D. 1976); and *McCullough v. Swanson*, 245 N.W.2d 262 (N.D. 1976)].

### Sections 28-18-06 and 28-18-09, NDCC

Mr. Higgins MOVED that § 28-18-06 be shown as superseded by Rules 50 and 59, NDR CivP, and Rules 10 and 28, NDR AppP, and that § 28-18-09 be shown as superseded by Rule 59, NDR CivP, and Rules 3 and 28, NDR AppP. Justice Vogel seconded the motion. Motion CARRIED.

### RULE 35 - NDR CrimP

Mr. Loder MOVED that the chair appoint a subcommittee to study Rule 35 and submit a proposed amendment. Mr. Lamb seconded the motion. Motion CARRIED.

The chair appointed Judge Burdick, Mr. Rolfson and Mr. Higgins.

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#### RULE 4 - NDRCivP

Mr. Loder MOVED that the Committee adopt the proposed amendment to Rule 4(e)(1)(D).  
Judge Burdick seconded the motion. Motion CARRIED.

##### (e) Service by Publication.

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

(A) The claim for relief is based upon 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 the defendant has or claims a lien thereon or other interest therein, whether vested or contingent, or the relief demanded against him consists wholly or partly in excluding him from such lien or interest or in defining, regulating, or limiting such lien or interest, or 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 upon or a security interest in real or personal property in this state;

(D) The plaintiff has acquired a lien upon property or credits of the defendant 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 from bed and board, or annulment of a marriage of a resident of this state or to determine custody of an individual subject to the court's jurisdiction; or

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

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#### RECESS

The meeting recessed to 9:00 a.m., October 28, 1977.

The Joint Procedure Committee reconvened at 9:00 a.m., October 28, 1977, with Justice Paul M. Sand, Chairman, presiding.

ATTENDANCE

Members Present:

Hon. Robert Vogel

Hon. Eugene A. Burdick

Hon. James H. O'Keefe

Hon. Halvor L. Halvorson

Mr. Leonard H. Bucklin

Mr. Kent Higgins

Mr. James L. Lamb

Mr. LeRoy A. Loder

Mr. David L. Peterson

Mr. Calvin N. Rolfson

Members Absent:

Hon. Gerald G. Glaser

Hon. Kirk Smith

Hon. Larry Hatch

Hon. R. C. Heinley

Mr. Harry Pearce

Mr. Jon M. Arntson

Mr. Larry Kraft

Mr. Timothy Q. Davies

Staff Present:



Joel W. Gilbertson

Eveleen Klaudt

#### REPORT ON RULE 35 - NDRCrimP

Judge Burdick reported that the subcommittee recommended that the previous action by which § 12.1-32-02(3), NDCC, was superseded be ratified. The subcommittee further recommended that §§ 12-53-01, 12-53-04, 12-53-17, and 12.1-32-06, NDCC, be shown as considered by Rule 35.

Judge Burdick MOVED that the report be adopted. Mr. Higgins seconded the motion. Motion CARRIED.

#### Section 28-27-09, NDCC

Mr. Higgins MOVED that the commentary to Rule 7, NDRAppP, show § 28-27-09, NDCC, as superseded. Judge Burdick seconded the motion. Motion CARRIED.

#### Section 28-27-10, NDCC

Mr. Higgins MOVED that the commentary to Rule 7, NDRAppP, show § 28-27-10, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

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#### Section 28-27-05, NDCC

Mr. Higgins MOVED that the commentary to Rules 3 and 25, NDRAppP, show § 28-27-05, NDCC, as superseded. Judge Burdick seconded the motion. Motion CARRIED.

#### Section 28-27-20, NDCC

Mr. Higgins MOVED that the commentary to Rule 7, NDRAppP, show § 28-27-20, NDCC, as superseded. Judge O'Keefe seconded the motion. Motion CARRIED.

#### Section 28-27-21, NDCC

Mr. Higgins MOVED that the commentary to Rule 7, NDRAppP, show § 28-27-21, NDCC, as superseded. Judge Burdick seconded the motion. Motion CARRIED.

#### RULE 7 - NDRAppP

Judge Burdick MOVED to amend Rule 7, NDRAppP, as follows: After the word "modified" in the third sentence of the Rule, add this sentence: "The bond must show the place of residence of each surety." Judge O'Keefe seconded the motion.

Mr. Peterson MOVED a substitute motion to place in the commentary to each of the Rules relating to bonds a statement that the names and addresses of the surety should be inserted on the bond. Mr. Higgins seconded the motion. Motion LOST on a vote of 4-6.

The question was on the motion of Judge Burdick to amend Rule 7 and to adopt Rule 7 as amended. Motion CARRIED on a vote of 6-5.

## RULE 7

### BOND FOR COSTS ON APPEAL IN CIVIL CASES

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant with the clerk of the trial court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of \$250 unless the trial court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the supreme court may direct if the judgment is modified. The bond must show the place of residence of each surety. If a bond or equivalent

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security in the sum of \$250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the trial court objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

#### Section 28-27-22, NDCC

Mr. Higgins MOVED that the commentaries to Rules 7 and 8, NDRAppP, show § 28-27-22 as superseded. Mr. Bucklin seconded the motion. Motion CARRIED.

#### Section 28-27-23, NDCC

Mr. Higgins MOVED that the commentary to Rule 7, NDRAppP, show § 28-27-23, NDCC, as superseded. Mr. Lamb seconded the motion. Motion CARRIED.

#### Section 28-27-26, NDCC

Mr. Higgins MOVED that the commentary to Rule 3, NDRAppP, show § 28-27-26, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

#### Section 28-27-27, NDCC

Justice Vogel MOVED that § 28-27-27, NDCC, be superseded by omission. Judge Burdick seconded the motion. Motion CARRIED.

#### Section 28-27-29.1, NDCC

Mr. Higgins MOVED that the staff review §§ 28-27-29.1 and 28-27-27, NDCC, to determine if any problem can arise by action to supersede. Mr. Lamb seconded the motion.

Judge Burdick made a substitute motion to show § 28-27-29.1 and § 28-27-27, NDCC, as being superseded and to have the staff research the possible problems.

The question was on the substitute motion. Motion CARRIED.

#### Section 28-27-30, NDCC

Mr. Higgins MOVED that the commentaries to Rules 36, 40, 41, and 45, NDRAppP, show § 28-27-30, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

#### Section 28-27-31, NDCC

Mr. Higgins MOVED that § 28-27-31, NDCC, be superseded by omission. Justice Vogel seconded the motion.

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Judge. O'Keefe MOVED a substitute motion that we not supersede § 28-27-31, but that the Staff Attorney be instructed to place a commentary on this statute as it may relate to particular Rules. Mr. Bucklin seconded the motion. Motion CARRIED.

#### NEXT MEETING

Mr. Higgins MOVED that the next meeting of the Joint Procedure Committee be held on January 12 and 13, 1978, commencing at 1:00 p.m. January 12. Judge Burdick seconded the motion. Motion CARRIED.

#### RECESS

The meeting recessed to 1:00 p.m. October 28, 1977.

The Joint Procedure Committee reconvened at 1:00 p.m., October 28, 1977, with Justice Paul M. Sand, Chairman, presiding.

#### ATTENDANCE

Members Present:

Hon. Robert Vogel  
Hon. Eugene A. Burdick  
Hon. James H. O'Keefe  
Hon. Halvor L. Halvorson  
Mr. Kent Higgins  
Mr. James L. Lamb  
Mr. LeRoy A. Loder  
Mr. David L. Peterson  
Mr. Calvin N. Rolfson

Members Absent:

Hon. Gerald G. Glaser  
Hon. Kirk Smith  
Hon. Larry Hatch  
Hon. R. C. Heinley  
Mr. Harry Pearce  
Mr. Jon M. Arntson  
Mr. Larry Kraft  
Mr. Timothy Q. Davies  
Mr. Leonard H. Bucklin  
Hon. William S. Murray

Section 28-27-33, NDCC

Judge Burdick MOVED that the commentaries to Rules 10 and 28, NDRAppP, show § 28-27-33 as superseded. Mr. Rolfson seconded the motion. Motion CARRIED.

Section 28-31-03, NDCC

Mr. Rolfson MOVED that the commentary to Rule 45, NDRAppP, show § 28-31-03 as superseded. Judge Halvorson seconded the motion. Motion CARRIED.

Section 28-31-04, NDCC

Judge Burdick MOVED that the commentary to Rule 34, NDRAppP, show § 28-31-04, NDCC, as superseded. Mr. Lamb seconded the motion. Motion CARRIED.

Section 28-31-05, NDCC

Mr. Higgins MOVED that the commentary to Rule 34, NDRAppP, show § 28-31-05, NDCC, as superseded. Mr. Loder seconded the motion. Motion CARRIED.

Section 28-31-10, NDCC

Mr. Higgins MOVED that the commentary to Rule 39, NDRAppP, show § 28-31-10, NDCC, as superseded. Judge Burdick seconded the motion. Motion CARRIED.

Section 29-28-01, NDCC

Mr. Rolfson MOVED that the commentary to Rule 1, NDRAppP, show § 29-28-01, NDCC, as considered. Mr. Higgins seconded the motion. Motion CARRIED.

Section 29-28-05, NDCC

Mr. Rolfson MOVED that the commentary to Rule 3, NDRAppP, show § 29-28-05, NDCC, as considered. Judge Burdick seconded the motion. Motion LOST.

Mr. Higgins MOVED that the commentary to Rule 3, NDRAppP, show § 29-28-05, NDCC, as superseded. Judge O'Keefe seconded the motion. Motion CARRIED.

Section 29-28-18, NDCC

Mr. Higgins MOVED that the commentary to Rule 11, NDRAppP, show § 29-28-18, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

Section 29-28-19, NDCC

Mr. Rolfson MOVED that the commentary to Rule 32, NDRAppP, show § 29-28-19, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

Section 29-28-20, NDCC

Mr. Higgins MOVED that the commentaries to Rules 3 and 27, NDRAppP, show § 29-28-20, NDCC, as superseded. Judge O'Keefe seconded the motion. Motion CARRIED.

Section 29-28-21, NDCC

Mr. Higgins MOVED that the commentary to Rule 3, NDRAppP, show § 29-28-21, NDCC, as superseded. Mr. Rolfson seconded the motion. Motion CARRIED.

Section 29-28-22, NDCC

Judge Burdick MOVED that the commentary to Rule 45, NDRAppP, show § 29-28-22, NDCC, as superseded. Mr. Higgins seconded the motion. Motion CARRIED.

Section 29-28-23, NDCC

Mr. Higgins MOVED that the commentary to Rule 34, NDRAppP, show § 29-28-23, NDCC, as superseded. Mr. Peterson seconded the motion. Motion CARRIED.

Section 29-28-24, NDCC

Mr. Higgins MOVED that the commentary to Rule 34, NDRAppP, show § 29-28-24, NDCC, as superseded. Justice Vogel seconded the motion. Motion CARRIED.

Section 29-28-25, NDCC

Mr. Higgins MOVED that the commentary to Rule 34, NDRAppP, show § 29-28-25, NDCC, as superseded. Judge Burdick seconded the motion. Motion CARRIED.

Section 29-28-29, NDCC

Judge Burdick MOVED to supersede § 29-28-29, and to instruct the Staff Attorney to prepare a new rule covering both civil and criminal matters to be incorporated in the rules, perhaps as Rule 35. Mr. Higgins seconded the motion. Motion CARRIED.

Section 29-28-32, NDCC

Mr. Rolfson MOVED that the commentary to Rule 36, NDRAppP, show § 29-28-32, NDCC, as superseded. Mr. Higgins seconded the motion. Motion CARRIED.

Section 28-18-04, NDCC

Judge Burdick MOVED that § 28-18-04, NDCC, be shown as superseded by Rule 10, and that the Staff Attorney prepare an amendment to Rule 10 containing the essential provisions. Mr. Rolfson seconded the motion. Motion CARRIED.

Section 28-18-05, NDCC

Mr. Lamb MOVED that the commentary to Rule 10, NDRAppP, show § 28-18-05, NDCC, as superseded. Mr. Higgins seconded the motion. Motion CARRIED.

Section 28-27-06, NDCC

Mr. Higgins MOVED that the commentary to Rule 11, NDRAppP, show § 28-27-06, NDCC, as superseded. Mr. Lamb seconded the motion. Motion CARRIED.

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Section 28-27-08, NDCC

Judge Burdick MOVED that the commentary to Rule 11, NDRAppP, show § 28-27-08 as superseded. Mr. Higgins seconded the motion. Motion CARRIED.

Section 28-27-07, NDCC

Justice Vogel MOVED that the commentary to Rule 10, NDRAppP, show § 28-27-07, NDCC, as superseded. Mr. Lamb seconded the motion. Motion CARRIED.

ADJOURNMENT

Judge Burdick MOVED that the meeting be adjourned. Mr. Rolfson seconded the motion. Motion CARRIED.