

MINUTES OF MEETING

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

January 17-18, 1980

CALL TO ORDER

The meeting was called to order at 1:00 p.m., January 17, 1980, by Justice Paul M. Sand, Chairman.

ATTENDANCE

Present

Hon. Eugene A. Burdick
Mr. Leonard H. Bucklin
Mr. William A. Hill
Mr. Larry Kraft
Mr. Herbert L. Meschke
Mr. David L. Peterson

Absent

Hon. Gerald G. Glaser
Hon. Halvor L. Halvorson
Hon. Larry Hatch
Hon. Robert C. Heinley
Hon. William S. Murray
Hon. James H. O'Keefe
Hon. Kirk Smith
Hon. Robert Vogel
Mr. Ward M. Kirby
Mr. LeRoy A. Loder
Mr. Richard A. McKennett
Mr. Russell G. Nerison

APPROVAL OF MINUTES

Judge Burdick MOVED that the minutes be approved as submitted. Mr. Bucklin seconded the motion. Motion CARRIED.

RULE 4, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to adopt the explanatory note to Rule 4, NDRCivP, as proposed. Mr. Peterson seconded the motion. Motion CARRIED.

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Rule 4 governs civil jurisdiction and service of process in North Dakota. Of necessity, it only slightly resembles Rule 4, FRCivP. This rule has been amended several times since its promulgation in 1957.

Originally, Rule 4 concerned process, with no mention of jurisdiction. In 1971, what are now subdivisions (a) [Definition of Person] and (b) [Jurisdiction of Person] were added. They were taken from the Uniform Interstate and International Procedure Act. Many changes were also made to subdivision (d) [previously (c)] concerning personal service, several of which were taken from that Act. Because of the addition of the above provisions, the various subdivisions were given new letter designations. A few other minor amendments were also made at that time.

Several amendments were made to this rule in 1975 [effective January 1, 1976]. The definition of a "person" [subdivision (a)] was expanded to include all fiduciaries and two or more persons having a joint or common interest. Subdivision (b)(2)(H) was added to greatly broaden jurisdiction. Subdivision (b)(5), based on the doctrine of forum non conveniens, was added at the same time. For the purpose of clarity and completeness of Rule 4, subdivisions (h)(4) and (j) were added and minor amendments were made to subdivisions (d)(2)(D), (d)(2)(G), (d)(3), (e)(6) and (h)(4). Some minor restructuring was also done to subdivisions (e)(7) through (i), basically redesignating the subdivisions.

Subdivisions (e)(1) and (e)(2) were substantially rewritten, effective January 1, 1977, to facilitate ease of understanding. Subdivision (e)(4) was also amended to require the mailing of the summons and complaint to the "defendant's last reasonably ascertainable post-office address."

In 1978 [effective January 1, 1979], Rule 4 was again amended. These amendments concerned the "minimum contact" theory. In the opening provision of subdivision (b)(2), the words "having such contact with this state that the exercise of personal jurisdiction over him does not offend against traditional notions of justice or fair play or the due process of law . . ." were added. This makes it clear that personal jurisdiction must meet the minimum-contact theory as well as falling within one of the circumstances in subparagraphs A through I. Previously those same words were just a part of subparagraph (H), which was also divided into (H) and (I), and sexual intercourse added as one of

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the circumstances and the "any other status" restricted to "legal" status. Subdivision (e)(1)(D) was also amended by adding the qualification that "the property or credit is the subject matter of

the litigation or the underlying claim for relief relates to the property or credits." This is a direct response to the holding in Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 686 (1977).

It is emphasized that personal service is preferred. When this is not possible, service by publication is authorized by subdivision (e), which requires a showing that personal service cannot be made upon the defendant in North Dakota [see subdivision (e)(2) for specific requirements].

Personal service may be made outside this state by any of the methods set out in subdivision (d)(3). A problem often arises with service by mail under subdivision (d)(3)(C) when the person to be served refuses delivery. This refusal of delivery is tantamount to receipt of the mail for purposes of service. On the other hand, when the mail is unclaimed, no service is made.

RULE 28, NDRCivP

Mr. Bucklin MOVED to amend the proposed amendment to Rule 28, NDRCivP, as follows:

Line 29: After the period insert, "(c) Commission or letter rogatory. The court may issue a commission or a letter rogatory for use within or without the United States."

Line 39: Within the brackets after the word "the" insert "state or"

Line 44: Strike "within the United States"

Judge Burdick seconded the motion.

Mr. Peterson MOVED a substitute motion that Rule 28 be re-drafted and submitted for consideration at the next meeting. Mr. Meschke seconded the motion. Motion CARRIED.

RULE 40, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to defer consideration of the note on Rule 40 until we have completed consideration of the local rules. Mr. Meschke seconded the motion. Motion CARRIED.

RULE 50, NDRCivP - EXPLANATORY NOTE

Mr. Peterson MOVED the adoption of the proposed explanatory note to Rule 50, NDRCivP. Judge Burdick seconded the motion. Motion CARRIED.

Rule 50 is identical to Rule 50, FRCivP, except for additions to subdivision (b) providing that a motion for judgment notwithstanding the verdict may be made upon the files, exhibits, and

minutes of the court; pertinent facts not a part of the minutes may be shown by affidavits; and either party may procure a complete or partial transcript of the proceedings for use upon hearing of the motion. These provisions were added [effective January 1, 1979] to clarify the basis of a motion for judgment notwithstanding the verdict and were derived from Rules 50.02 and 59.02, Minn. Rules Civ.Proc.

RULE 59, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to adopt the proposed explanatory note to Rule 59, NDRCivP. Mr. Peterson seconded the motion. Motion CARRIED.

Rule 59 concerns the same subject matter as Rule 59, FRCivP, but is more extensive in content than the federal rule. It is derived partially from Rule 59, FRCivP, and incorporates most of Ch. 28-19, NDRC 1943.

Subdivisions (a), (c), (e), (f) and (g) are identical to Sections 28-1901, 28-1903, 28-1905, 28-1906 and 28-1907, NDRC 1943, respectively.

Subdivision (b) is identical to Section 28-1902, NDRC 1943, except for the addition to paragraph 7 of the words "when required" and the rewriting of paragraph 8 to broaden its scope.

As originally promulgated, subdivision (d) was identical to Section 28-1904, NDRC 1943, but was amended [effective January 1, 1979] to clarify and expand the basis of a motion for a new trial. The amendments to subdivision (d) were derived from Rule 59.02, Minn. Rules of Civ. Proc.

Subdivision (h) is derived from Rule 59(a), FRCivP, but also specifies that the court may limit a new trial to one or more issues or to the taking of additional testimony on one or more issues.

Subdivisions (i) and (j) are identical to Rules 59(d) and 59(e), FRCivP, respectively, except for the specification in subdivision (j) that the motion be served not later than 10 days after "notice" of entry of judgment, rather than after entry of the judgment.

RULE 65, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to amend the proposed explanatory note to Rule 65, NDRCivP, as follows:

Line 3: After "the" delete "statutes are" and insert "controlling statute is"

Mr. Bucklin seconded the motion.

Mr. Peterson MOVED a substitute motion to amend the second sentence in line 3 to read: "To the extent that the statute is silent on procedure, these rules apply." Mr. Bucklin seconded the motion. Motion CARRIED.

RULE 65, NDRCivP

Judge Burdick MOVED to reconsider Rule 65, NDRCivP, for the purpose of offering an amendment. Mr. Peterson seconded the motion. Motion CARRIED.

Judge Burdick MOVED that Rule 65, NDRCivP, be amended by adding: "To the extent that the statute is silent on procedure, these rules apply." Mr. Bucklin seconded the motion. Motion CARRIED.

Judge Burdick MOVED to adopt Rule 65, NDRCivP, as amended. Mr. Peterson seconded the motion. Motion CARRIED.

The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute. To the extent that the statute is silent on procedure, these rules apply.

RULE 65, NDRCivP - EXPLANATORY NOTE

Mr. Peterson MOVED to amend the proposed explanatory note to Rule 65, NDRCivP, by deleting the first sentence and inserting: "This rule differs substantially from Rule 65, FRCivP." Judge Burdick seconded the motion. Motion CARRIED.

Mr. Hill MOVED to delete the former wording of the explanatory note to Rule 65, NDRCivP, and amend it to read:

"This rule differs substantially from Rule 65, FRCivP.

"Chapters 32-05 and 30-06, NDCC, generally cover the procedure for the issuance of injunctions and restraining orders."

Mr. Kraft seconded the motion. Motion CARRIED.

Mr. Bucklin MOVED to adopt the amended explanatory note to Rule 65, NDRCivP. Mr. Hill seconded the motion. Motion CARRIED.

This rule differs substantially from Rule 65, FRCivP.

Chapter 32-05 and 32-06, NDCC, generally cover the procedure for the issuance of injunctions and restraining orders.

RULE 66, NDRCivP - EXPLANATORY NOTE

Mr. Bucklin MOVED to adopt the proposed explanatory note to Rule 66, NDRCivP, with style changes. Judge Burdick seconded the motion. Motion CARRIED.

Rule 66 is identical to Rule 66, FRCivP, except for changes to conform to the court system of North Dakota and additions (i) to allow a foreign receiver to sue in district court without going through the formal ceremony of an auxiliary appointment and (ii) to specify statutes as one of the sources of procedure for the administration of estates.

RULE 67, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to amend the proposed explanatory note to Rule 67, NDRCivP, by deleting "provisions of" in line 2. Mr. Peterson seconded the motion. Motion CARRIED.

Judge Burdick MOVED to adopt the explanatory note to Rule 67, NDRCivP, as amended. Mr. Peterson seconded the motion. Motion CARRIED.

Rule 67 is identical to Rule 67, FRCivP, except reference to North Dakota statutes has been substituted for reference to federal statutes.

RULE 68, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to amend the proposed explanatory note to Rule 68, NDRCivP, as follows:

Line 1: Add "except for a provision that the clerk may enter a judgment only upon order of the court"

Line 7: Delete "starting" and insert "commencing"

Mr. Peterson seconded the motion. Motion CARRIED.

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Mr. Bucklin MOVED to adopt the explanatory note to Rule 68, as amended. Mr. Peterson seconded the motion. Motion CARRIED.

Subdivision (a) is identical to Rule 68, FRCivP, except for a provision that the clerk may enter a judgment only upon order of the court.

Subdivision (b) is similar to subdivision (a) except the defendant may tender money instead of making an offer of judgment. Unlike the offer of judgment, this can only be made in an action for the recovery of money.

Subdivision (c) authorizes a judgment by confession to be entered without commencing an action. This subdivision is the same as Chapter 28-10, NDRC 1943, which previously governed the subject.

Early in its history, the North Dakota Supreme Court ruled that the authority to confess judgment must be clear and explicit and must be strictly followed. Rasmussen v. Hagler, 108 N.W. 541 (N.D. 1906).

RULE 69, NDRCivP EXPLANATORY NOTE

Mr. Bucklin MOVED to amend the proposed explanatory note to Rule 69, NDRCivP by deleting the third sentence, and in line 5 delete "execution" and insert "enforcement." Mr. Peterson seconded the motion.

Judge Burdick MOVED a substitute motion to delete lines 2 and 3, and to revise line 4 to read: "The basic procedure for enforcement of a judgment for the payment of money is statutory. Chapters 28-21, 28-25, and 33-09, NDCC." Mr. Meschke seconded the motion. Motion CARRIED.

Judge Burdick MOVED to adopt the explanatory note to Rule 69, NDRCivP, as amended. Mr. Meschke seconded the motion. Motion CARRIED.

Rule 69 is an adaptation of Rule 69(a), FRCivP. The basic procedure for enforcement of a judgment for the payment of money is statutory. Chapters 28-21, 28-25, and 33-09, NDCC.

This rule was amended in 1971 to make clear that all discovery procedures are available in aid of execution. Prior to that time, the judgment creditor could only "examine any person." That language appeared to preclude the use of certain types of discovery, including Rule 34 (production of documents, etc.).

Subdivision (b) of the federal rule does not apply to this State and was not incorporated into this rule.

RULE 70, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to amend the proposed explanatory note to Rule 70, NDRCivP, as follows:

Line 1: Add "the substitution of "state" for "district."

Lines 2 and 3: Delete

Mr. Bucklin seconded the motion. Motion CARRIED.

Mr. Bucklin MOVED to adopt the explanatory note to Rule 70, NDRCivP, as amended. Judge Burdick seconded the motion. Motion CARRIED.

Rule 70 is identical to Rule 70, FRCivP, except for the substitution of "state" for "district."

RULE 71, NDRCivP - EXPLANATORY NOTE

Mr. Bucklin MOVED to adopt the proposed explanatory note to Rule 71, NDRCivP. Mr. Meschke seconded the motion. Motion CARRIED.

Rule 71 is identical to Rule 71, FRCivP, and is "... intended to assure that process be made available to enforce court orders in favor of and against persons who are properly affected by them, even if they are not parties to the action." Lasky v. Quinlan, 558 F.2d 1133, 1137 (2d Cir. 1977).

As an example, the North Dakota Supreme Court held, in United Accounts, Inc. v. Larson, 121 N.W.2d 628 (N.D. 1963), that a judgment of foreclosure of a lien was enforceable against the original party's assignee who was not made a party to the action. This rule may also be used in conjunction with class actions governed by Rule 23.

RULES 72 THROUGH 76, NDRCivP - EXPLANATORY NOTE

Mr. Meschke MOVED to adopt the proposed explanatory note to Rules 72, 73, 74, 75, and 76, NDRCivP. Judge Burdick seconded the motion. Motion CARRIED.

Rules 72, 73, 74, 75, and 76, FRCivP, concerning appeals, were abrogated, effective July 1, 1968. These rules were never adopted for use in North Dakota. See the North Dakota Rules of Appellate Procedure for procedure to be followed in this State.

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RULE 77, NDRCivP - EXPLANATORY NOTE

Amendments to the explanatory note to Rule 77, NDRCivP, were discussed at length, and it was decided to lay the matter over to the next day.

RECESS

The meeting recessed to 9:00 a.m., January 18, 1980.

CALL TO ORDER

The meeting was called to order at 9:00 a.m., January 18, 1980, with Judge Burdick presiding in the temporary absence of Justice Sand.

ROLL CALL

Present

Hon. Eugene A. Burdick

Mr. Leonard H. Bucklin

Mr. William A. Hill

Mr. Larry Kraft

Mr. James L. Lamb (10:50 a.m.)

Mr. Herbert L. Meschke

Mr. David L. Peterson (9:30 a.m.)

RULE 77, NDRCivP - EXPLANATORY NOTE

Mr. Kraft MOVED to amend the proposed explanatory note to Rule 77, NDRCivP, as follows:

Delete lines 3 through 9, and insert: "Both the Federal Rule 77(c) and the North Dakota Rule 77(c) set forth motions and applications grantable of course by the clerk. The federal rule covers additional matters."

Line 11: Delete everything after "rule."

Lines 12 through 19: Delete, and insert: "In an action where an appearance has been made by an adverse party, the prevailing party has 10 days after entry of judgment in which to serve the adverse party with notice of entry of judgment. The 60-day time period for appeal by the adverse party does not start until notice of entry of judgment is served [see Rule 4 (a), NDRAppP]."

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Mr. Hill seconded the motion. Motion CARRIED.

Mr. Kraft MOVED to adopt the explanatory note to Rule 77, NDRCivP, as amended. Mr. Hill seconded the motion. Motion CARRIED.

Subdivisions (a) and (b) are identical to Rule 77(a) and (b), FRCivP.

Both the Federal Rule 77(c) and the North Dakota Rule 77(c) set forth motions and applications grantable of course by the clerk. The federal rule covers additional matters.

Subdivision (d) varies considerably from the federal rule. In an action where an appearance has been made by an adverse party, the prevailing party has 10 days after entry of judgment in which to serve the adverse party with notice of entry of judgment. The 60-day time period for appeal by the adverse party does not start until notice of entry of judgment is served [see Rule 4(a), NDRAppP].

RULES 78-79, NDRCivP - EXPLANATORY NOTE

Mr. Meschke MOVED to amend the proposed explanatory note to Rules 78 and 79, NDRCivP, as follows:

Delete the second and third sentences and insert: "Because these subjects are adequately covered in North Dakota statutes and other rules, these two rules were not adopted for North Dakota. See, e.g., § 11-17-01, NDCC."

Mr. Kraft seconded the motion. Motion CARRIED.

Mr. Meschke MOVED to adopt the amended explanatory note to Rules 78 and 79, NDRCivP. Mr. Bucklin seconded the motion. Motion CARRIED.

Rules 78 and 79, NDRCivP, concern motion day and books and records kept by the clerk of court, respectively. Because these subjects are adequately covered in North Dakota statutes and rules, these two rules were not adopted for North Dakota. See, e.g., § 11-17-01, NDCC.

RULE 80, NDRCivP - EXPLANATORY NOTE

Mr. Bucklin MOVED to adopt the proposed explanatory note to Rule 80, NDRCivP. Mr. Meschke seconded the motion. Motion CARRIED.

Rule 80 is identical to Rule 80, FRCivP.

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Justice Sand resumed the chair.

RULE 81, NDRCivP - EXPLANATORY NOTE

Mr. Bucklin MOVED to amend the proposed explanatory note to Rule 81, NDRCivP, as follows:

Lines 3-7: Delete

Lines 20-23: Delete

Judge Burdick seconded the motion. Motion CARRIED.

Mr. Kraft MOVED to amend the proposed explanatory note to Rule 81, NDRCivP, as follows:

Line 13: Delete "made it clear" insert "held"

Line 1: Delete "has" and insert "serves"

Lines 8-12: Delete

Judge Burdick seconded the motion. Motion CARRIED.

Judge Burdick MOVED to adopt the explanatory note to Rule 81, NDRCivP, as amended. Mr. Peterson seconded the motion. Motion CARRIED.

Rule 81 serves the same purpose as Rule 81, FRCivP, but deviates completely as to content and construction.

The North Dakota Supreme Court has held that these rules govern procedures on appeal to district court from a decision of an administrative agency except where applicable statutes are inconsistent with the rules. See Reliance Insurance Company v. Public Service Commission, 250 N.W.2d 918 (N.D. 1977) and Schroeder v. Burleigh County Board of Commissioners, 252 N.W.2d 893 (N.D. 1977).

RULE 82, NDRCivP - EXPLANATORY NOTE

Mr. Peterson MOVED to adopt the proposed explanatory note to Rule 82, NDRCivP. Mr. Meschke seconded the motion. Motion CARRIED.

Rule 82 is identical to Rule 82, FRCivP, except for a deletion of reference to admiralty or maritime claims and the substitution of "North Dakota" for "United States." Jurisdiction of the courts and venue of actions are governed by the North Dakota Century Code, not by these rules.

RULE 83, NDRCivP - EXPLANATORY NOTE

Mr. Bucklin MOVED to defer consideration of this explanatory note, as well as Rule 40, NDRCivP, until we have discussed the "local" rules. Judge Burdick seconded the motion. Motion CARRIED.

RULE 84, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to amend the proposed explanatory note to Rule 84, NDRCivP, by deleting the last sentence. Mr. Peterson seconded the motion. Motion CARRIED.

Judge Burdick MOVED to adopt the amended explanatory note to Rule 84, NDRCivP. Mr. Meschke seconded the motion. Motion CARRIED.

Rule 84 is identical to Rule 84, FRCivP. The forms contained in the Appendix are intended for illustration only. They are limited in number, as no attempt has been made to furnish a manual of forms.

RULE 86, NDRCivP - EXPLANATORY NOTE

Judge Burdick MOVED to adopt the proposed explanatory note to Rule 86, NDRCivP. Mr. Peterson seconded the motion. Motion CARRIED.

Subdivision (a) is identical to Rule 86(a), FRCivP, except for the actual effective date of the original rules. Amendments to the rules are effective as prescribed by Section 12, Rule on Procedural Rules, Administrative Rules and Administrative Orders of the North Dakota Supreme Court (NDRPR), and § 27-02-14, NDCC. The effective date of amendments to FRCivP is governed by 18 U.S.C. § 2072, with exceptions made by Congress.

Section 87 of the North Dakota Constitution, and § 27-02-09, NDCC, give the Supreme Court authority to promulgate rules of procedure and supersede procedural statutes. The superseding is accomplished by subdivision (b).

TABLE A - SPECIAL STATUTORY PROCEEDINGS UNDER RULE 81

Mr. Bucklin MOVED that Table A be considered at the next meeting, and that the call for the meeting point out that if anyone has additions or deletions to Table A that they bring them to the meeting for discussion. Mr. Peterson seconded the motion. Motion CARRIED.

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TABLE C - LIST OF STATUTES SUPERSEDED

Mr. Bucklin MOVED to adopt Table C as proposed. Mr. Peterson seconded the motion. Motion CARRIED.

TABLE C

List of Statutes Superseded

Statute Superseded Rule

N.D.Rev.Code 1943

Except as otherwise

indicated

10-1401 9(a)

27-05-07 NDCC 77

28-0201 17(a)

28-0202 (first sentence) 17(a)

28-0203 Generally

28-0204 17(b)

28-0205 20(a)

28-0206 20(a)

28-0207 20(a)

28-0208 19(a), 23(a)

28-0209 Generally

28-0210 20(a)

28-0211 21

28-0212 25(a)(1)

28-0213 25(a)(2)

28-0214 25(b)

28-0215 25(c)

28-0216 25(d)

28-0217 25(a)(1)

28-0218 25(a)(3)

28-0219 24(a), 24(b)

28-0220 24(c)

28-0221 24(c)

28-0222 19(b)

28-0223 22(a)

28-0224 22(b)

28-0501 3

28-0502 4(a)

28-0503 4(a)

28-0504 4(b), 12(a)

28-0505 4(b)

28-0511 5(d)(1)

28-0601 4(d)

28-0602 4(d)(2)

28-0603 4(d)(3)

28-0604 4(d)(5)

28-0605 4(d)(6)

28-0606 4(d)(4); 4(e)(2)

28-0607 4(d)(4)

28-0608 4(d)(4)

28-0609 4(d)(4)

28-0610 4(d)(1)

28-0616 4(d), 4(e)

28-0617 Generally

28-0619 4(c)

28-0620 4(g)(1)

28-0621 4(g)(2)

28-0622 4(g)(3)

28-0623 4(g)(4)

28-0624 4(g)(5)

28-0625 4(g)(6)

28-0626 4(g)(7)

28-0627 4(g)(8)

28-0628 4(i)

28-0629 4(j)

28-0630 5(e)

28-0631 Generally

28-0632 4(h)

28-06.1 NDCC 4

28-0701 8(a), 10(a)

28-0702 7(a), 8(a)(1), 10(a)

28-0703 18(a)

28-0704 7(a), 7(c), 12(a)

28-0705 7(c)

28-0706 7(c), 12(b)

28-0707 7(c), 12(b)

28-0708 7(c), 12(b)

28-0709 7(c), 12(b), 12(h)

28-0710(l) 8(b)

28-0710(2) 8(c)

28-0711 12(i)

28-0712 12(j)

28-0713 12(f)

28-0714 13

28-0715 8(b), 10(b)

28-0716 7(a), 7(c), 12(a)

28-0717 7(a)

28-0718 7(c), 12(b)

28-1719 15(d)

28-0720 11

28-0722 12(f)

28-0723 9(h)

28-0724 12(e)

28-0725 12(e)

28-0726 9(e)

28-0727 15(d)(2)

28-0728 9(c)

28-0729 8(a), 8(c)

28-0730 9(d)

28-0731 8(a)

28-0732 8(b)

28-0733 8(b)

28-0734 7(c), 12(b)

28-0735 15(a)

28-0736 15(a)

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28-0737(4) 15(b)

28-0738 15(a)

28-0739 6(b)

28-0740 8(d)

28-0741 8(f)

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28-0745 15(b)

28-0801(1)(2) 41(a)(1)

28-0801(3) 41(a)(2)

28-0801(4)(5) 41(b)

28-0802 41(a)(1)

28-0803 41(b)

28-0804 41(a)(2)

28-0805 41(b)

28-0806 41(b)

28-0901 54(a)

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28-0903 55(a)

28-0904 55(a)

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28-0906 55(a)(3)

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28-0912 68(a)

28-1001 68(c)(1)

28-1002 68(c)(2)

28-1003 68(c)(3)

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28-1102 16

28-1103 16

28-1104 16

28-1104(1) 12(d)
28-1104(2) 12(c)
28-1201 Generally
28-1202 Generally
28-1203 Generally
28-1204 Generally
28-1205 Generally
28-1206 38(d), 39(b)
28-1207 40
28-1208 40
28-1209 Generally
28-1210 Generally
28-1212 40(b)
28-1213 20(b), 42(b)
28-1214 38(d)

28-1215 42(a)
28-1404 47(a)
28-14-05 NDCC 47
28-1409 47(b)
28-1411 51
28-1412 51

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28-1501 49(a), 49(b)

28-1502 49(a)

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28-1509 50(a)

28-1510 50(b)

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28-1602 52(a)

28-1603 52(a)

28-1604 Generally

28-1605 52(b)

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28-1702 53(b)

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28-1705 53(a)(3)

28-1706 53(c), 53(d), 53(e)

28-1707 53(a)(4)

28-1708 53(a)(1)

28-1709 53(a)(1)

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28-18-06 NDCC 50, 59

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28-1901 59(a)

28-1902 59(b)

28-1903 59(c)

28-1904 59(d)

28-1905 59(e)

28-1906 59(f)

28-1907 59(g)

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28-2002 77(d)

28-2003(1) 20(a)

28-2003(2) 54(b)

28-2003(3) 54(b)

28-2003(4) 41(b)

28-2004 54(c)

28-2005 54(d)

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28-2606 54(e)

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28-2615 54(f)

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28-2712 62(f)

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28-2803 6(d), 7(b)(1)

28-2806 7(b)(3)

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28-2811 5(b)

28-2812 5(b)

28-2813 5(b)

28-2814 5(b)

28-2815 6(d)

28-2816 6(e)

28-2817 6(d)

28-2818 6(b), 6(d)

28-2819 5(a)

28-2820 5(b)

28-2821 5(a)

28-2901 60(b)

28-2902 6(b)

28-2903 6(b)

28-3001 4(a), 11

28-3002 Generally

28-3003 Generally

28-3004 Generally

28-3005 5(d)(1)

28-2006 6(b)

31-0113 45(d)(3)

31-0120 45(c)(3)

31-0121 45(c)(2)

31-0122 43(d)

31-0201 27(c)

31-0202 43(b)

31-0203, as amended 26(a) (now 30(a), 31(a)]

31-0204 26 (d) , 26 (f) [now 32(a), 32(c)]

31-0205 37(b), 37(d)

31-0206 26(a), 27(a), 43(b) [now

30(a), 31(a), 27(a), 43(b)]

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31-0302 45(a), 45(b)

31-0303 45(b)

31-0305 45(a)

31-0306 45(d)

31-0310 45(c)(1)

31-0311 45(c)(1)

31-0312 45(c)(2)

31-0314 45(f)

31-0501 26(d)(3) [now 32(a)(3)]

31-0502 26(a) [now 30(a), 31(a)]

31-0503 28(a)

31-0504 28(a)

31-0505 28(c)

31-0506 31(a)

31-0507 30(a)

31-0508 55(a)

31-0509 39(a)

31-0510 5(a)

31-0511 26(a), 30(a) (now 30(a),

31(a), 30(a)]

31-0512 30(a)

31-0513 30(e)

31-0514 30(f)

31-0515 30(f)

31-0516 30(f)

31-0517 30(f)

31-0518 26(d)(3) [now 32(a)(3)]

31-0519 6(d)(4) [now 32(d)(4)]

31-0520 30(c)

31-0521 30(c)

31-0701 27(a)(1)

31-0702 27(a)(1)

31-0703 27(a)(3)

31-0704 27(a)(2)

31-0705 27(a)(3), 28(a), 28(b), 31(a)

31-0706 28(a)

31-0707 30(f)

31-0708 30(f)

31-0709 27(a)(4)

31-0710 26(e), 30(c) [now 32(b), 30(c)]

31-0711 30(c)

31-0712 27(a)(1), 27(a)(2)

31-0713 27

31-0714 30(f)

31-0715 27(a)(4), 30(f)

31-0803 36, 37(c)

31-0804 34

32-0109 2

32-0113 39(b)

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LOCAL RULES FOR THE DISTRICT COURTS

This was discussed at length and it was decided to submit a questionnaire on this subject to the members of the bar and the judiciary.

RECESS

The meeting recessed to 1:00 p.m., January 18, 1980.

CALL TO ORDER

The meeting was called to order at 1:00 p.m., January 18, 1980, by Justice Paul M. Sand.

ROLL CALL

Present

Hon. Eugene A. Burdick

Mr. William A. Hill

Mr. James L. Lamb

Mr. Herbert L. Meschke

NEXT MEETING

Judge Burdick MOVED to schedule the next meeting of the Joint Procedure Committee to March 20 and 21, 1980, with the chairman to be given the authority to change the date for exceptional circumstances. Mr. Peterson seconded the motion. Motion CARRIED. [On January 21, 1980, the meeting date was changed by Justice Sand to March 27 and 28, 1980.]

RULES OF COURT FOR THE DISTRICT COURTS

Mr. Peterson MOVED to adopt draft No. 3 of the questionnaire. Mr. Lamb seconded the motion. Motion CARRIED.

Mr. Meschke MOVED that Justice Sand and Mr. Magnusson, staff attorney, be given authority to take all further steps necessary, including editing and printing of the form for distribution to the bench and bar. Mr. Peterson seconded the motion. Motion CARRIED.

QUESTIONNAIRE ON DEVELOPMENT OF RULES

FOR THE DISTRICT COURTS

The Joint Procedure Committee is currently engaged in studying the subject of rules for the District Courts. Some of these rules are now found in Rules of Court for the District Courts. Some districts have promulgated rules, some have not, and some are considering additional separate "local" District Court Rules.

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For the guidance of the Joint Procedure Committee, we would like the views of the bench and bar on the following:

1. Are separate "local" procedural rules for each district in the State [check one in each category]:

A. Necessary ____

Unnecessary ____

B. Desirable ____

Undesirable ____

C. Useful ____

Useless ____

2. Choose only one of the following categories:

A. Separate "local" procedural rules for each district should be allowed if not inconsistent with statewide rules. ____

B. All procedural rules for district courts should be incorporated into the present Civil and Criminal Rules, eliminating both separate statewide and separate "local" district court rules. ____

C. All procedural rules supplementing the North Dakota Rules of Civil and Criminal Procedure should be incorporated into statewide rules for the district courts, eliminating separate "local" rules for each district. ____

3. If separate "local" procedural rules for each district are permitted:

Should they be carefully restricted to selected subjects?

Yes ____ No ____

Should they be allowed as guidelines only, without sanctions?

Yes ____ No ____

Should they be approved by the Supreme Court before becoming effective?

Yes ____ No ____

4. Is there any particular rule which should be kept or promulgated solely as a "local" rule because it is not appropriate for statewide application?

Yes ____ No ____

If yes, identify the rule or rules

5. Comments:

Mr. Peterson MOVED that Mr. Magnusson bring the results of the questionnaire to the next meeting for further consideration by the committee. Mr. Meschke seconded the motion. Motion CARRIED.

NEW BUSINESS - ITEMS F AND G

Mr. Peterson MOVED that Mr. Magnusson do some light research on items F and G and report to the committee at

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its next meeting. Mr. Meschke seconded the motion. Motion CARRIED.

ADJOURNMENT

Mr. Meschke MOVED to adjourn to March 20, 1980, at 1:00 p.m. Mr. Hill seconded the motion. Motion CARRIED.