

## MINUTES OF MEETING

### Joint Procedure Committee

December 11-12, 1980

#### CALL TO ORDER

The meeting was called to order at 1:00 p.m., December 11, 1980, by Justice Paul M. Sand, Chairman.

#### ATTENDANCE

##### Present

Hon. Eugene A. Burdick  
Hon. Gerald G. Glaser  
Hon. Halvor L. Halvorson  
Hon. William W. Murray  
Hon. James H. O'Keefe  
Mr. Leonard H. Bucklin  
Mr. William A. Hill  
Mr. David L. Peterson

##### Absent

Hon. Larry Hatch  
Hon. Robert C. Heinley  
Hon. Kirk Smith  
Hon. Robert Vogel  
Mr. Larry Kraft  
Mr. James L. Lamb  
Mr. LeRoy A. Loder  
Mr. Richard A. McKennett  
Mr. Herbert L. Meschke  
Mr. Russell G. Nerison

#### APPROVAL OF MINUTES

Mr. Hill MOVED that the minutes of the October 30-31, 1980, meeting, at page 12, be amended as follows:

Rule 30(b)(2)(A), NDRCivP: Delete "the district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea," and insert "this State"

and when so amended that the minutes be adopted, with style changes. Judge Murray seconded the motion. Motion CARRIED.

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#### RULE 4, NDRCivP, EXPLANATORY NOTE

Judge Burdick MOVED to further amend the explanatory note to Rule 4, NDRCivP, as follows:

Line 71: Delete "provides that"; after the comma, insert "Rules 4(d)(4)"; after "81(a)" insert "and recognize"

Line 72: Delete "will"

and when so amended that the explanatory note be approved and recommended for promulgation and adoption by the Supreme Court. Mr. Peterson seconded the motion. Motion CARRIED.

#### RULE 26, NDRCivP, EXPLANATORY NOTE

Mr. Peterson MOVED that the explanatory note to Rule 26, NDRCivP, be adopted as submitted, and recommended for promulgation and adoption by the Supreme Court. Judge Burdick seconded the motion. Motion CARRIED.

Rule 26 is identical to Rule 26, FRCivP, except for the provision in the first sentence of subdivision (f) that an action must be filed before a discovery conference is directed, rather than commenced as in the federal rule. In the federal system, an action is commenced by filing.

#### RULE 32, NDRCivP, EXPLANATORY NOTE

Mr. Peterson MOVED that the explanatory note to Rule 32, NDRCivP, be adopted as submitted, and recommended for promulgation and adoption by the Supreme Court. Judge Burdick seconded the motion. Motion CARRIED.

Rule 32 is identical to Rule 32, FRCivP, except for reference in subdivision (a)(1) to the North Dakota Rules of Evidence rather than the federal rules. Effective January 1, 1980, subdivision (c), on the effect of taking or using depositions, was abrogated to conform to federal amendments subsequent to the adoption of the Rules of Evidence. As the Notes of the Advisory Committee on the 1975 amendments to the civil rules state:

"The concept of 'making a person one's own witness' appears to have had significance principally in two respects: impeachment and waiver of incompetency. Neither retains any vitality under the Rules of Evidence. The old prohibition against

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impeaching one's own witness is eliminated by Evidence Rule 607. The lack of recognition in the Rules of Evidence of state rules of incompetency in the Dead Man's area renders it unnecessary to consider aspects of waiver arising from calling the incompetent party-witness. Subdivision (c) is deleted because it appears to be no longer necessary in the light of the Rules of Evidence."

#### RULE 37, NDRCivP, EXPLANATORY NOTE

Judge Burdick MOVED that the explanatory note to Rule 37, NDRCivP, be adopted as submitted. Judge Halvorson seconded the motion. Motion CARRIED.

Rule 37 is identical to Rule 37, FRCivP, with a minor change to conform to our system. In subdivision (f), State of North Dakota is substituted for United States. The rule encourages the imposition of sanctions in cases in which there has been an abuse of discovery rules.

#### RULE 11.5, NDSCR [Now North Dakota Rules of Court (NDROC)]

Judge Burdick MOVED to amend Rule 11.5 as follows:

Line 1: Delete "Supplemental";

Line 2: Delete "Court"; after "Rules" insert "of Court"; delete NDSCR and insert NDROC.

Judge O'Keefe seconded the motion. Motion CARRIED.

These rules shall be known as North Dakota Rules of Court and may be cited as NDROC.

#### SUPPLEMENTAL RULES OF COURT

Judge Burdick MOVED to change the title to "Rules of Court"; in "II" add a line, "Rule 2.1 [Reserved for future use.]"; after "V" add a line, "Rule 5.1 [Reserved for future use.]". Judge Halvorson seconded the motion. Motion CARRIED.

### NORTH DAKOTA RULES OF COURT

#### I. Scope of Rules

##### Rule 1.1 Scope

#### II. Commencement of Action - Service of Process,

##### Pleadings, Motions and Orders

##### Rule 2.1 [Reserved for future use]

### III. Pleadings and Motions

#### Rule 3.1 Pleadings

#### Rule 3.2 Submission on Briefs and Filing

### IV. Parties

#### Rule 4.1 Appointment of Guardian Ad Litem

### V. Depositions and Discovery

#### Rule 5.1 [Reserved for future use]

### VI. Trials

#### Rule 6.1 Continuances

#### Rule 6.2 Opening Statements

#### Rule 6.3 Parties' Order of Proceeding

#### Rule 6.4 Exhibits

#### Rule 6.5 Masters

### VII. Judgment

#### Rule 7.1 Judgments, Orders and Decrees

### VIII. Provisional and Final Remedies and Special Proceedings

#### Rule 8.1 Receivers

#### Rule 8.2 Domestic Relations

#### Rule 8.3 Property and Debt Listing (Divorce Cases)

### IX. Appeals

#### Rule 9.1 Administrative Appeals

## X. Courts and Clerks

### Rule 10.1 Conduct in Court

## XI. General Provisions

### Rule 11.1 Nonresident Attorneys

### Rule 11.2 Withdrawal of Attorneys

### Rule 11.3 Stipulations

### Rule 11.4 Bonds in Non-Criminal Matters

### Rule 11.5 Title

## MULTI-DISTRICT RULE

Mr. Peterson MOVED to indefinitely postpone action on this Rule. Judge O'Keefe seconded the motion. Motion CARRIED.

Judge Burdick MOVED that the proposed language for a new section [§ 28-04-07.1] be submitted to Mr. Vogel and to Mr. Brown for whatever use they wish to make of it.

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The North Dakota Supreme Court may order consolidated for the purposes of trial, and specify the place of trial, issues of use and necessity under section 32-15-05 common to actions in eminent domain pending in two or more judicial districts and regulate the trial thereof.

Mr. Hill seconded the motion. Motion CARRIED.

## RULE 56, NDRCrimP

It is the consensus of the committee that under Statutes Affected in the explanatory note the following statutes should be superseded: 27-01-03, 27-07-15, 29-01-11 and 40-18-04; section 33-01-02 should be "considered."

## NEXT MEETING

The next meeting of the Joint Procedure Committee will be March 26 and 27, 1981, commencing at 1:00 p.m. on March 26.

## RECESS

The meeting recessed to 9:00 a.m., Friday, December 12, 1980.

### CALL TO ORDER

The meeting was called to order at 9:00 a.m., December 12, 1980, by Justice Paul M. Sand, Chairman.

### ATTENDANCE

#### Present

Hon. Eugene A. Burdick  
Hon. Gerald G. Glaser  
Hon. Halvor L. Halvorson  
Hon. James H. O'Keefe  
Mr. William A. Hill  
Mr. David L. Peterson

### RULE 30, NDRCivP, EXPLANATORY NOTE

Judge Burdick MOVED to amend the explanatory note to Rule 30, NDRCivP, as follows:

Line 2: After the word "are" insert "the deletion from subdivision (b)(2)(A) of requirements that do not

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conform to state practice;"

and that the amended and adopted explanatory note be submitted to the Supreme Court for promulgation and adoption. Mr. Hill seconded the motion. Motion CARRIED.

Rule 30 is derived substantially from Rule 30, FRCivP. The only deviations are the deletion from subdivision (b)(2)(A) of requirements that do not conform to state practice; the addition of subdivision (b)(3) of the last sentence making clear that the court may take into account the convenience of parties and witnesses and the interests of justice in regulating the time and order of taking depositions; addition to subdivision (c) of a provision to allow the court to order who pays the cost of transportation; and in subdivision (e) reduction of the federal 30-day time period for the witness to sign the deposition to 10 days.

Subdivision (c) was also amended, effective January 1, 1980, to refer to the Rules of Evidence (see Rule 611), rather than Rule 43(b). Deviating again from the federal rule, subdivision (b)(4) was amended, effective January 1, 1980, to allow audio-visual depositions without a court order. Because of this deviation, the 1980 amendments to the first sentence of subdivision (b)(4) of the

federal rule, concerning stipulations for recording by other than stenographic means, were not adopted. Stipulations are covered by Rule 29.

#### APPROVAL OF EXPLANATORY NOTES TO RULES OF CIVIL PROCEDURE

Judge Burdick MOVED that the following Rules of Civil Procedure, including explanatory notes, as amended and adopted by the committee, be submitted to the Supreme Court for promulgation and adoption:

Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23.1, 23.2, 24, 25, 26, 27, 28, 29, 30, 30.1, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.

Mr. Hill seconded the motion. Motion CARRIED.

#### REFERENCES TO NORTH DAKOTA CONSTITUTION

Judge O'Keefe MOVED that references to the North Dakota Constitution in the explanatory notes reflect the new numbering system, and also the previous number. Judge Glaser seconded the motion. Motion CARRIED.

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Judge Glaser MOVED that the following Rules of Civil Procedure, including explanatory notes, as amended and adopted by the committee, be submitted to the Supreme Court for promulgation and adoption:

Rules 41, 42, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72-76, 77, 78-79, 80, 81, 82, 83, 84, 85, 86, Table A.

Mr. Peterson seconded the motion. Motion CARRIED.

#### TABLE C - RULE 86, NDRCivP

Judge Burdick MOVED to amend Table C to read "Table B", and to make the proper change wherever it appears in Rule 86, NDRCivP, and to submit it as amended and adopted by the committee to the Supreme Court for promulgation and adoption. Mr. Hill seconded the motion. Motion CARRIED.

#### RULE 8.2, NDROC

Judge Burdick MOVED to amend Rule 8.2, NDROC, lines 35 and 36, to delete "costs in the sum of \$150.00." Judge O'Keefe seconded the motion. Motion CARRIED.

#### APPROVAL OF NORTH DAKOTA RULES OF COURT

Judge Burdick MOVED to submit to the Supreme Court for promulgation and adoption the North Dakota Rules of Court as amended and adopted by the committee.

Rules 1.1, 3.1, 3.2, 4.1, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 8.1, 8.2, 8.3, 9.1, 10.1, 11.1, 11.2, 11.3, 11.4, and 11.5.

Mr. Peterson seconded the motion. Motion CARRIED.

#### RULES OF COURT FOR THE DISTRICT COURTS

Judge Burdick MOVED to repeal the Rules of Court for the District Courts. Mr. Peterson seconded the motion. Motion CARRIED.

#### APPROVAL OF NORTH DAKOTA RULES OF CRIMINAL PROCEDURE

Judge Burdick MOVED that the following Rules of Criminal Procedure, and explanatory notes, as amended and adopted by the committee, be submitted to the Supreme Court for promulgation and adoption:

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Rules 12.2, 21, 42, and 57.

Judge O'Keefe seconded the motion. Motion CARRIED.

#### APPROVAL OF NORTH DAKOTA RULES OF APPELLATE PROCEDURE

Judge Burdick MOVED that the explanatory note to Rule 4, NDRAppP, as amended and adopted by the committee, be submitted to the Supreme Court for promulgation and adoption. Judge Halvorson seconded the motion. Motion CARRIED.

#### APPROVAL OF NORTH DAKOTA RULES OF EVIDENCE

Judge Burdick MOVED that the following explanatory notes and Rules of Evidence, as amended and adopted by the committee, be submitted to the Supreme Court for promulgation and adoption:

Rules 1101, 801, and 609.

Mr. Hill seconded the motion. Motion CARRIED.

#### ADJOURNMENT



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