

MINUTES OF MEETING

Joint Procedure Committee

April 15-16, 1982

CALL TO ORDER

The meeting was called to order at 9:00 a.m., April 15, 1982, by Justice Paul M. Sand, Chairman.

ATTENDANCE

Present

Hon. Eugene A. Burdick
Hon. Gerald G. Glaser
Hon. Frank J. Kosanda
Hon. Lawrence A. LeClerc
Hon. Kirk Smith
Mr. Leonard Bucklin
Mr. Ward M. Kirby (2:00 p.m.)
Mr. Herbert L. Meschke

Absent

Hon. Robert C. Heinley
Hon. William S. Murray
Hon. James H. O'Keefe
Hon. Robert Vogel
Mr. William A. Hill
Mr. Larry Kraft
Mr. James L. Lamb
Mr. LeRoy A. Loder
Mr. Richard A. McKennett
Mr. Russell G. Nerison
Mr. David L. Peterson

APPROVAL OF MINUTES

Judge Kosanda MOVED that the Minutes be approved as submitted. Judge Burdick seconded the motion. Motion CARRIED.

RULE 16, NDRCrimP

Judge Burdick MOVED to adopt Article IV, part 2 of the Uniform Rules of Criminal Procedure, which includes Rules 421, 422 and 423. Judge Kosanda seconded the motion. Motion LOST.

Judge Glaser MOVED that Rule 16(i), subparagraph 1, be amended to strike out "in any criminal prosecution" at the beginning of the sentence, and striking out "on direct examination" at the end of the sentence. Judge LeClerc seconded the motion. Motion WITHDRAWN.

Judge Burdick MOVED to defer further consideration of Rule 16, NDRCrimP, to the next meeting. Judge LeClerc seconded the motion. Motion CARRIED.

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RULE 4, NDRCivP

Mr. Bucklin MOVED to adopt the proposed amendments to Rule 4, NDRCivP, with the exception of the language on lines 16 and 17, "or within 20 days after a demand, whichever is later"; line 97, delete the comma after the words "if any" and insert a period; delete the proposed language on lines 97, 98, and 99; and insert a new paragraph (k) to read as follows:

"(k) Effect of mail refusal. If a summons and complaint or other process is mailed with delivery restricted and requiring a receipt signed by the addressee, the return of the mail bearing an official indication on the cover that delivery was refused constitutes delivery."

Judge Burdick seconded the motion.

RECESS

The meeting recessed to 1:00 p.m.

CALL TO ORDER

The meeting was called to order at 1:00 p.m. April 15, 1982, by Justice Paul M. Sand, Chairman.

Judge Glaser was absent at this time.

RULE 4, NDRCivP

The question was on the motion of Mr. Bucklin, seconded by Judge Burdick, to adopt the proposed amendments to Rule 4, NDRCivP. Motion CARRIED.

RULE 4

PERSONS SUBJECT TO JURISDICTION - PROCESS - SERVICE

(c) Process.

(1)

(2) Summons Served With or Without Complaint. A copy of the complaint need not be served with the summons in which case the summons shall state that the complaint is or will be filed with the clerk of the district court in the county in which

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the action is commenced, and if the defendant within 20 days after service of the summons causes notice of appearance to be given and in person or by an attorney demands in writing a copy of the complaint, specifying a place within the state where it may be served, a copy thereof within 20 days thereafter must be served accordingly. If, in such case, the complaint is not filed with the clerk within 20 days after service of the summons, the action shall be deemed discontinued.

(d) Personal Service.

(1)

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

(A) upon an individual 14 or more years of age by (i) delivering a copy of the summons to him personally; (ii) leaving a copy thereof at his dwelling house or usual place of abode in the presence of a person of suitable age and discretion then residing therein; (iii) delivering a copy of the summons to his agent authorized by appointment or by law to receive service of process; or (iv) any form of mail addressed to the person to be served and requiring a signed receipt and resulting in delivery to that person;

(B)

(C)

(D) upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by (i) delivering a copy of the summons to an officer, director, superintendent or managing or general agent, or partner, or associate, or to an agent authorized by appointment or by law to receive service of process in its behalf, or to one who acted as an agent for the

defendant with respect to the matter upon which the claim of the plaintiff is based and who was an agent of the defendant at the time of service; (ii) if the sheriff makes a return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons at any office of the domestic or foreign corporation, partnership or unincorporated association within this state with the person in charge of the office; or (iii) any form of mail addressed to any of the foregoing persons and requiring a signed receipt and resulting in delivery to that person;

(E) through (G)

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

(A)

(B)

(C) by any form of mail addressed to the person to be served and requiring a signed receipt and resulting in delivery to that person;

(D)

(E)

(4)

(e) through (g)

(h) Proof of Service. Proof of service of the summons and of the complaint or notice, if any, accompanying the same or of other process, must be made as follows:

(1) through (3)

(4) in any other case of service by mailing resulting in delivery in accordance with paragraph (2) or (3) of subdivision (d) of this rule, by an affidavit of the mailing of a copy of the summons and complaint or other process, with return receipt attached; or

(5)

(i)

(j) Content of Affidavit of Mailing. An affidavit of mailing required by this rule must state that a copy of the process, pleading, order of court, or other paper to be served was deposited by the affiant, with postage prepaid, in the United States mail and directed to the party shown in the affidavit to be served at his last reasonably ascertainable post office address, showing the date and place of depositing and that the affiant is of legal age and having attached thereto the return receipt, if any.

(k) Effect of mail refusal. If a summons and complaint or other process is mailed with delivery restricted and requiring a receipt signed by the addressee, the return of the mail bearing an official indication on the cover that delivery was refused constitutes delivery.

RULE 8.2, NDROC

Judge LeClerc MOVED to adopt the proposed headnote to Rule 8.2(c), as follows: "Ex Parte Interim Order - Affidavit Restraining and Eviction Order." Judge Burdick seconded the motion. Motion CARRIED.

Mr. Bucklin MOVED to not adopt the proposed amendments to Rule 8.2, NDROC, lines 30 through 44. Judge Kosanda seconded the motion. Motion CARRIED.

(c) Ex Parte Interim Order - Affidavit - Restraining and Eviction Order. An ex parte interim order will not be issued unless the movant executes an affidavit setting forth specific facts relied on by the party sufficient to justify the issuance of the order. Unless excused by the court for good cause shown, a restraining and eviction order will not be issued ex parte unless the movant also appears personally.

RULE 3.2, NDROC

Judge Burdick MOVED to amend Rule 3.2(c), NDROC, by adding the following language at the end of line 24, as follows:

"The court, with the consent of all parties affected, may hear oral argument on any motion by telephonic conference."

Judge Burdick MOVED to amend Rule 3.2(c), NDROC, by adding the following language at the end of line 24, as follows:

"The court, with the consent of all parties affected, may hear oral argument on any motion by telephonic conference."

and to not adopt the proposed amendments on lines 43 through 54. Mr. Bucklin seconded the motion. Motion CARRIED.

Judge Kosanda MOVED to not adopt the proposed amendments to Rule 3.2(h), lines 55 through 80. Judge LeClerc seconded the motion. Motion CARRIED.

SUBMISSION ON BRIEFS AND FILING

(a) Filing with Clerk. Unless otherwise permitted by the court, all notices of motion and supporting instruments, with proofs of service, must be filed with the clerk at least 3 days before the date of any hearing permitted, and all returns thereto shall be served and filed with the clerk at least one day before the date of hearing. Unless so served and filed, the motions, and returns thereto, may be vacated by the court.

(b) Filing Prior to Hearing in Default Matters. All pleadings and other instruments relating to default matters must be filed with the clerk prior to the hearing, unless otherwise directed by the court.

(c) Submission on Briefs. Unless otherwise ordered by the court upon serving and filing a motion, the moving party shall serve and file a brief and the adverse party shall have 10 days after service of the brief within which to serve and file an answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is deemed submitted and taken under advisement by the court, unless counsel for any party requests the taking of testimony or oral argument on the motion. The court, in its discretion,

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may permit the taking of testimony or oral argument on its own motion. Each motion shall be heard at a time designated by the court. The court, with the consent of all parties affected, may hear oral argument on any motion by telephonic conference.

(d) Failure to File Briefs. Failure to file briefs or to request the taking of testimony or oral argument within the prescribed time subjects a motion to summary ruling. Failure to file a brief by the moving party is an admission that, in the opinion of counsel, the motion is without merit. Failure to file a brief by the adverse party is an admission that, in the opinion of counsel, the motion is meritorious.

(e) Extension of Time. Extensions of time for filing briefs, or for continuance of the hearing on a motion, shall be granted only by written order of court. All requests for extension of time or continuance, whether written or oral, must be accompanied by an appropriate order form.

(f) Time Limit for Filing Motion. Except for good cause shown, a motion must be filed in such time that it may be heard not later than the date set for pretrial of the case.

RULES 32 and 32.1, NDRCrimP

Judge Burdick MOVED to not adopt the proposed Rule 32.1, NDRCrimP, and to retain the proposed deleted material in Rule 32, NDRCrimP. Judge Smith seconded the motion. Motion CARRIED.

RULE 8.2, NDROC

Judge Burdick MOVED to amend Rule 8.2(e), NDROC, as follows: "A judgment requiring payment of child support or alimony combined with child support or an interim order must provide:". Judge Kosanda seconded the motion.

Mr. Meschke MOVED a substitute motion to table the motion because this is a substantive matter requiring action by the Legislature. Judge LeClerc seconded the motion. Motion CARRIED.

Judge Burdick MOVED that Rule 8.2, NDROC, be reconsidered and that the staff counsel be instructed to redraft it, eliminating the method of payment of support payments. Judge LeClerc seconded the motion. Motion CARRIED.

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RULE 59(c), NDRCivP

Judge Burdick MOVED that in the Civil Rules wherever the time limit is controlled by the entry of judgment that we add the words "notice of entry", and that the staff prepare a list of those rules for action by the committee at its next meeting. Mr. Meschke seconded the motion. Motion CARRIED.

Judge Burdick MOVED that Rule 59(c), NDRCivP, be amended to read as follows:

"A motion for a new trial must be made not later than ~~within~~ the following time after ~~the return of the verdict or rendition of the decision~~ notice of entry of judgment:"

Judge LeClerc seconded the motion. Motion CARRIED.

(c) Time for Motion for New Trial. A motion for a new trial must be made not later than the following time after notice of the entry of the judgment:

1. Upon the ground of newly discovered evidence, within 6 months; and
2. Upon any other ground, within 60 days, unless the court, for good cause shown, shall extend the time.

NEXT MEETING:

The next meeting of the Joint Procedure Committee will be on September 30 and October 1, 1982, commencing at 9:00 a.m. on the 30th and continuing to 12:00 noon on October 1.

RECESS

The meeting recessed to 9:00 a.m., April 16, 1982.

CALL TO ORDER

The meeting was called to order at 9:00 a.m., April 16, 1982, by Justice Paul M. Sand, Chairman.

ATTENDANCE

Present:

Hon. Eugene A. Burdick

Hon. Gerald G. Glaser

Hon. Frank J. Kosanda

Hon. Lawrence A. LeClerc

Hon. Kirk Smith

Mr. Ward M. Kirby

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RULE 54(c), NDRCivP

Judge Kosanda MOVED that the staff counsel be instructed to study rules other States may have promulgated in the area of costs and disbursements and submit a draft of a rule embodying these concepts at the next meeting of the Committee. Judge LeClerc seconded the motion. Motion CARRIED.

RULE 9.1, NDROC

Judge Kosanda MOVED that we do not adopt the proposed amendments to Rule 9.1, NDROC. Judge Burdick seconded the motion. Motion CARRIED.

RULE 34.1, NDRAppP

Judge LeClerc MOVED that we do not adopt the proposed amendments to Rule 34.1, NDRAppP. Judge Kosanda seconded the motion. Motion CARRIED.

RULE 3.2(c), NDROC

Judge Burdick MOVED to amend Rule 3.2(c), NDROC, in the third line from the bottom to delete the word "permit" and insert the word "require." Judge Glaser seconded the motion. Motion CARRIED.

(c) Submission on Briefs. Unless otherwise ordered by the court upon serving and filing a motion, the moving party shall serve and file a brief and the adverse party shall have 10 days after service of the brief within which to serve and file an answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is deemed submitted and taken under advisement by the court, unless counsel for any party requests the taking of testimony or oral argument on the motion. The court, in its discretion, may require the taking of testimony or oral argument on its own motion. Each motion shall be heard at a time designated by the court. The court, with the consent of all parties affected, may hear oral argument on any motion by telephonic conference.

ADJOURNMENT

Judge Burdick MOVED to adjourn to September 30, 1982, at 9:00 a.m. Mr. Kirby seconded the motion. Motion CARRIED.