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STATE OF NORTH DAKOTA

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Proposed Amendments to the North Dakota:

Rules of Court
Rules of Appellate Procedure
Administrative Rules and Orders

Submitted by the
Joint Procedure Committee
October 2009

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SYNOPSIS OF PROPOSED AMENDMENTS

A. North Dakota Rules of Court

Rule 3.4 - Privacy Protection for Filings Made with the Court

An amendment to Rule 3.4 is proposed creating a new subdivision (b) indicating it is the parties' responsibility for ensuring that no protected information is contained in filed documents. A clerk of district court will not be required to review a document filed with the court for compliance with the rule.

A proposed amendment deletes existing subdivision (e) Option for Additional Unredacted Filing Under Seal.

An amendment is proposed requiring a confidential information form to be filed under paragraph (f)(1) if a filing contains protected information. The term "confidential information form" replaces the term "reference list."

An amendment is proposed requiring a prosecutor, under paragraph (f)(2), to file a confidential information form that includes, when known, a defendant's social security number and birth date.

Rule 8.2 - Interim Orders In Domestic Relations Cases

An amendment to Rule 8.2 is proposed amending subparagraph (a)(5)(A) to provide a mandatory hearing within 30 days of the issuance of an ex parte interim order. The proposed amendment to subparagraph (a)(5)(B) requires the party obtaining the interim order to secure a hearing date and personally serve the interim order and the order for appearance on the opposing party.

A proposed amendment deletes subparagraph (a)(5)(C).

B. North Dakota Rules of Appellate Procedure

Rule 28 - Briefs

An amendment to Rule 28 is proposed creating a new subparagraph (b)(7)(C) that will require a party to brief the appropriateness of a district court's grant of a certification under N.D.R.Civ.P. 54(b) when the appeal is brought as a result of the certification.

Rule 32 - Form Of Briefs, Appendices, and Other Papers

An amendment to Rule 32 is proposed creating a new subparagraph (a)(7)(C). The new subparagraph limits the length of an argument on N.D.R.Civ.P. 54(b) certification to 2,500 words or 10 pages. The limits for Rule 54(b) certification do not count toward the overall word and page limits for a principal brief.

C. North Dakota Supreme Court Administrative Rules and Orders

Rule 41 - Access to Court Records

An amendment to Rule 41 is proposed creating a new Section 3(c) stating clerks of district court are not required to review and redact information in a court record filed before March 1, 2009, the effective date of N.D.R.Ct. 3.4.

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RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, ~~or, in a criminal case, the home address of an individual~~; a party or nonparty making the filing must include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number; ~~and~~
- (5) ~~in a criminal case, the city and state of the home address.~~

(b) Responsibility of Party or Nonparty to Redact. A party or nonparty making a filing with the court is solely responsible for ensuring that protected information does not appear on the filing. The clerk of district court is not required to review a document filed with the court for compliance with this rule.

~~(b)~~ (c) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

- (1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

- 22 (2) the record of an administrative or agency proceeding;
- 23 (3) the record of a court or tribunal, if that record was not subject to the redaction
24 requirement when originally filed;
- 25 (4) a filing covered by Rule 3.4(c) (d);
- 26 (5) a court filing that is related to a criminal matter and that is prepared before the
27 filing of a criminal charge or is not filed as part of any docketed criminal case;
- 28 (6) an arrest or search warrant; and
- 29 (7) a charging document and an affidavit filed in support of a charging document;
- 30 (8) the name of an individual known to be a minor when the minor is a party, and
31 there is no statute, regulation or rule mandating nondisclosure; and
- 32 (9) a court filing that is related to criminal matters, non-criminal motor vehicle and
33 game and fish matters, and infractions, a defendant's date of birth.

34 (c) (d) Filings Made Under Seal. The court may order that a filing be made under seal
35 without redaction. The court may later unseal the filing or order the person who made the
36 filing to file a redacted version for the public record.

37 (d) (e) Protective Orders. For good cause, the court may by order in a case:

- 38 (1) require redaction of additional information; or
- 39 (2) limit or prohibit a nonparty's remote electronic access to a document filed with the
40 court.

41 ~~(e) (f) Option for Additional Unredacted Filing Under Seal. A person making a~~
42 ~~redacted filing may also file an unredacted copy under seal. The court must retain the~~

43 ~~unredacted copy as part of the record.~~

44 (f) ~~Option for Filing a Reference List~~ Confidential Information Form.

45 (1) In General. A filing that contains redacted information may must be filed together
46 with a ~~reference list~~ confidential information form (shown in Appendix H) that identifies
47 each item of redacted information and specifies an appropriate identifier that uniquely
48 corresponds to each item listed. ~~The list form must be filed under seal and may be amended~~
49 ~~as of right~~ will be confidential except as to the parties or as the court may direct. Any
50 reference in the case to a listed identifier will be construed to refer to the corresponding item
51 of information.

52 (2) Defendant Information. ~~In a criminal case, the prosecutor must file a reference list~~
53 ~~that includes the defendant's social security number, birth date and street address.~~ In a
54 criminal case, the prosecutor must file a confidential information form that includes, when
55 known, the defendant's social security number and birth date.

56 (g) Non-conforming Documents.

57 (1) Waiver. A person waives the protection of Rule 3.4(a) as to the person's own
58 information by filing it without redaction and not under seal.

59 (2) Sanctions. If a party fails to comply with this rule, the court on motion of another
60 party or its own motion, may order the pleading or other document to be returned to the party
61 for reformation prior to filing, be reformed with an extension of time to complete the filing
62 within any applicable deadline. If the document has been filed, and an order to reform is not
63 obeyed, the court may order the document stricken.

EXPLANATORY NOTE

64
65 Rule 3.4 was adopted effective March 1, 2009. Rule 3.4 was amended, effective
66 March 15, 2009; _____.

67 Parties should limit the amount of protected information they include in court filings.
68 This rule requires parties to redact protected information when its inclusion in a filing cannot
69 be avoided.

70 This rule's redaction requirements are intended to exclude protected information from
71 public disclosure. Unless a document is also placed in a non-restricted file, redaction of
72 documents filed in cases that are confidential by law or rule is not required.

73 The term "financial-account number" includes any credit, debit or electronic fund
74 transfer card numbers, and any other financial account number.

75 Documents containing redacted protected information must be filed together with a
76 confidential information form under subdivision (f) when a party is required by statute,
77 policy or rule to include the protected information in the document. For example, N.D.C.C.
78 § 14-05-02.1 requires a divorce decree to contain the social security numbers of the parties
79 to the divorce. Under subdivision (f), a party to a divorce case may comply with this statute
80 and the redaction requirements of this rule by filing a confidential information form and a
81 redacted version of the decree in the public part of the file.

82 Subdivision (a) was amended, effective _____, to eliminate the requirement
83 to redact addresses in criminal matters.

84 Subdivision (b) was adopted, effective _____, to indicate it is the

85 responsibility of a party or nonparty making a court filing to refrain from including protected
86 information in the filing.

87 Subdivision (c), formerly subdivision (b), was amended, effective _____,
88 to add a redaction exemption for the name of a minor when the minor is a party and there is
89 no statute, regulation or rule mandating nondisclosure of the minor's name.

90 Subdivision (c), formerly subdivision (b), was amended, effective _____,
91 to add a redaction exemption for a defendant's date of birth in a court filing that is related
92 to criminal matters, non-criminal motor vehicle and game and fish matters, and infractions.

93 Subdivision (f) was amended, effective _____, to require that state's
94 attorneys file confidential information forms containing certain defendant information when
95 known.

96 Subdivision (g) was amended, effective _____, to allow courts to order
97 reformation of documents not in conformity with this rule prior to filing.

98 Sources: Joint Procedure Committee Minutes of September 24-25, 2009, pages _____;
99 May 21-22, 2009, pages 28-44; January 24, 2008, pages 9-12; October 11-12, 2007, pages
100 28-30; April 26-27, 2007, page 31.

101 Statutes Affected:

102 Considered: N.D.C.C. § 14-05-02.1.

103 Cross Reference: N.D.R.Ct. 3.1 (Pleadings); N.D. Sup. Ct. Admin. R. 41 (Access to
104 Judicial Records).

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RULE 8.2. INTERIM ORDERS IN DOMESTIC RELATIONS CASES

(a) Ex Parte Interim Order.

(1) No interim order may issue except upon notice and hearing unless the court specifically finds exceptional circumstances. Exceptional circumstances include:

(A) Threat of imminent danger to any party or minor child of the party; or

(B) Circumstances indicating that an ex parte order is necessary to protect the parties, any minor children of the parties, or the marital estate.

(2) No ex parte interim order may be issued unless the movant executes an affidavit setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the movant also appears personally and good cause is shown for issuance of the order.

(3) The provisions which may be included in an ex parte interim order are temporary parental rights and responsibilities, support and other appropriate expenses, use of real or personal property, restraining and eviction.

(4) If there has been an appearance in the action by the adverse party, or if the attorney for the moving party has knowledge that the adverse party is represented by an attorney, the attorney for the moving party shall notify the court. After receiving notice of the appearance or representation, the court shall attempt to hold an emergency hearing, either in person or by telephonic conference, at which both parties may be heard, before issuing any order. The issuance of an order following an emergency hearing will in no manner affect a party's right

22 to a further hearing on the merits of the order as provided in Rule 8.2(a)(5).

23 (5) An interim order issued ex parte must provide specifically:

24 (A) ~~That the party to whom the order is directed, upon written motion may have a~~
25 ~~hearing upon the necessity for the issuance of the order or the amounts to be paid be held~~
26 ~~within 30 days of the issuance of the ex parte interim order, unless an earlier hearing is~~
27 ~~required under N.D.C.C. ch. 14-07.1, or an application for change of venue is pending. If the~~
28 ~~ex parte order contains provisions delineated in N.D.C.C. ch. 14-07.1, the hearing must be~~
29 ~~scheduled in a timely manner to conform with the chapter, and~~

30 (B) ~~That unless the motion is served and filed in the office of the clerk of district court~~
31 ~~within 10 days after service of the interim order, the order becomes final and is~~
32 ~~nonappealable, pending a final determination of the issues raised by the pleadings or until~~
33 ~~further order of the court in the event of a material change of circumstances. the party~~
34 ~~obtaining the interim order must secure a hearing date and personally serve the interim order~~
35 ~~and the order for appearance on the opposing party.~~

36 (C) ~~That any hearing on the order must be held within 30 days from the date the~~
37 ~~motion is filed, unless an earlier hearing is required under N.D.C.C. ch. 14-07.1, or an~~
38 ~~application for change of venue is pending. If the ex parte order contains provisions~~
39 ~~delineated in N.D.C.C. ch. 14-07.1, the hearing must be scheduled in a timely manner to~~
40 ~~conform with the chapter.~~

41 (6) The ex parte interim order remains in effect until it is amended following a court
42 hearing.

43 (b) Interim Orders Upon Motion and Hearing.

44 (1) Support. An interim order may provide for payment of support and other
45 appropriate expenses. In the event support is ordered, a current mailing address must be listed
46 for both parties.

47 (2) Parental Rights and Responsibilities. An interim order providing for temporary
48 parental rights and responsibilities and a parenting schedule of minor children may be
49 granted, in which case the order must provide for reasonable parenting time, unless the
50 evidence establishes that parenting time should be restricted to certain times and places or
51 prohibited.

52 (3) Attorney's Fees and Costs. An interim order may provide for payment of attorney's
53 fees and costs if evidence establishes that a party has insufficient personal income or funds
54 with which to pay attorney's fees and costs.

55 (4) Use of Property. An interim order may provide for the use of real or personal
56 property, and for restraining and eviction.

57 (5) An interim order may not be amended except upon stipulation of the parties or in
58 the event of a material change of circumstances.

59 (c) Payment. The interim order must provide for any spousal support payment, child
60 support payment, or combined payment of child support and spousal support, to be paid to
61 and through the State Disbursement Unit. Payment must be in a manner acceptable to the
62 State Disbursement Unit unless otherwise ordered by the court.

63 (d) Time for Hearing Upon Notice. If a notice of motion and motion are served to

64 obtain an interim order, the court shall hold a hearing no later than 30 days from the date of
65 filing the motion. If venue is changed before the hearing for an interim order is held, the
66 hearing for an interim order must be held no later than 30 days after venue is changed.

67 (e) Submission of Evidence.

68 (1) Financial Statement. In any proceedings under this rule, each party shall file an
69 itemized financial statement prepared as illustrated in appendix B.

70 (2) Affidavit. Unless the court otherwise orders, evidence either in support of or in
71 opposition to the interim order must be presented by affidavit. Evidence presented by
72 affidavit may not be considered unless, at the time of the evidentiary hearing, the party
73 offering the affidavit makes the affiant available for cross examination.

74 (3) Time for Service and Filing. The affidavits and itemized financial statement of the
75 moving party must be served and filed no later than ten days prior to the commencement of
76 the hearing. Respondent's affidavits and itemized financial statement must be served and
77 filed no later than three days prior to the commencement of the hearing.

78 (4) Order of Proceeding. The party initially seeking interim relief shall proceed first
79 at the hearing.

80 EXPLANATORY NOTE

81 Rule 8.2 was amended, effective September 1, 1983; January 1, 1995; March 1, 1996;
82 March 1, 1999; March 1, 2001; October 9, 2002; August 1, 2009; _____.

83 A motion for a change of venue must be promptly ruled upon in order to accomplish
84 the Committee's intent for interim orders to be expeditiously heard.

85 Subdivision (a)(5) was amended, effective _____, to provide a
86 mandatory hearing upon the necessity for the issuance of the order or the amounts to be paid
87 be held within 30 days of the issuance of an ex parte interim order.

88 Subdivision (b)(5) was added, effective March 1, 2001.

89 Subdivision (c) was amended, effective March 1, 2001; October 9, 2002. When an
90 order for child support or spousal support is entered, the order must provide for payment to
91 and through the State Disbursement Unit.

92 Sources: Joint Procedure Committee Minutes of _____; May 21-22,
93 2009, pages 44-45; September 26-27, 2002; September 28-29, 2000, pages 9-10; January
94 27-28, 2000, pages 19-21; April 30-May 1, 1998, pages 8-9; April 27-28, 1995, pages 9-15;
95 September 23-24, 1993, pages 16-17; April 20, 1989, page 17; April 26, 1984, page 17;
96 September 30-October 1, 1982, pages 18-21; December 11-12, 1980, pages 3-4 and 7.

RULE 28. BRIEFS

(a) Form of Briefs. All briefs must comply with 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 page references;

(2) a table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of 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

22 discussion of the issues); and

23 (C) if the appeal is from a district court's grant of a certification under N.D.R.Civ.P.
24 54(b), whether the certification was appropriate.

25 (8) a short conclusion stating the precise relief sought.

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

29 (1) the jurisdictional statement;

30 (2) the statement of the issues;

31 (3) the statement of the case;

32 (4) the statement of the facts; and

33 (5) the statement of the standard of review.

34 (d) Reply Brief. The appellant may file a single brief in reply to the appellee's brief.

35 Unless the court permits, no further briefs may be filed. A reply brief must contain a table
36 of contents, with page references, and a table of authorities – cases (alphabetically arranged),
37 statutes, and other authorities – with references to the pages of the reply brief where they are
38 cited.

39 (e) References to Parties. In briefs and at oral argument, counsel should minimize use
40 of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties'
41 actual names or the designations used in the lower court or agency proceeding, or such
42 descriptive terms as "the employee," "the injured person," "the taxpayer," "the purchaser."

43 (f) References to the Record. References to the parts of the record contained in the
44 appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix
45 is prepared after the briefs are filed or if references are made in the briefs to parts of the
46 record not reproduced in the appendix, the references must be to the docket number of that
47 part of the record. A party referring to evidence whose admissibility is in controversy must
48 cite the pages of the appendix or of the transcript at which the evidence was identified,
49 offered, and received or rejected.

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

53 (h) [Reserved].

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

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

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

62 (3) The cross-appellant may file a reply brief confined strictly to the arguments raised
63 in the cross-appeal. This brief is due within 14 days after service of the appellant's reply

64 brief; however, if there is less than 14 days before oral argument, the reply brief must be filed
65 at least 3 days before argument.

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

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

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

78 EXPLANATORY NOTE

79 Rule 28 was amended, effective March 1, 1986; January 1, 1988; March 1, 1994;
80 March 1, 1996; March 1, 2003; March 1, 2008; _____.

81 Under paragraph (b)(4), each legal issue should be stated as a question of law
82 sufficiently specific to allow the court to understand the precise issue presented. Generalized
83 statements such as, "Is the verdict supported by the evidence?" are not sufficient.

84

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

88 Rule 28 was revised, effective March 1, 2003, in response to the December 1, 1998,
89 amendments to Fed.R.App.P. 28. The language and organization of the rule were changed
90 to make the rule more easily understood and to make style and terminology consistent
91 throughout the rules. Substantive changes were made to conform this rule with the changes
92 made in Rule 32.

93 Subdivision (a) was added to inform parties that all briefs must comply with Rule 32.

94 Subdivision (b) :

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

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

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

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

105 Subdivision (h) was amended, effective March 1, 2003, to delete length limitations,

106 which have been moved to Rule 32.

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

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

112 Sources: Joint Procedure Committee Minutes of _____; April 26-27,
113 2007, pages 29-31; September 27-28, 2001, pages 7-9; April 27-28, 1995, pages 15-17;
114 January 26-27, 1995, pages 6-7; September 29-30, 1994, pages 13-16; January 28-29, 1993,
115 page 11; February 19-20, 1987, page 8; September 18-19, 1986, pages 15-16; November 30,
116 1984, pages 32-33; October 19, 1984, pages 23-26; March 16-17, 1978, page 4; January
117 12-13, 1978, pages 15-18. Rule 28, Fed.R.App.P. 28.

118 Statutes Affected:

119 Superseded: N.D.C.C. §§ 28-18-06, 28-18-09, 28-27-33, 29-23-01, 29-23-02,
120 29-23-03, 29-23-04, 29-23-08, and 29-23-09.

121 Cross Reference: N.D.R.App.P. 25 (Filing and Service), N.D.R.App.P. 30
122 (Appendix), N.D.R.App.P. 31 (Filing and Service of Briefs), and N.D.R.App.P. 32 (Form
123 of Briefs, Appendices, and Other Papers).

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RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

(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.

(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. 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

22 obscure the text and permits the brief to lie reasonably flat when open.

23 (4) Paper Size, Line Spacing, and Margins. The brief must be on 8½ by 11 inch paper.
24 Margins must be at least one and one-half inch at the left and at least one inch on all other
25 sides. Pages must be numbered at the bottom, either centered or at the right side.

26 (5) Typeface. Either a proportionally spaced or a monospaced face may be used.

27 (A) A proportionally spaced face must be 12 point or larger with no more than 16
28 characters per inch. The text must be double-spaced, except quotations may be single-spaced
29 and indented. Headings and footnotes may be single-spaced and must be in the same typeface
30 as the text.

31 (B) A monospaced face must be a 12-point font having ten characters per inch. The
32 text, including quotations and footnotes, must be double-spaced with no more than 27 lines
33 of type per page. Headings and footnotes must be in the same typeface as the text.

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

36 (7) Page and Type-Volume Limitations.

37 (A) Word Limit for Proportional Typeface. If proportionately spaced typeface is used,
38 a principal brief may not exceed 10,500 words, and a reply brief may not exceed 2,500
39 words, excluding words in the table of contents, the table of citations, and any addendum.
40 Footnotes must be included in the word count.

41 (B) Page Limit for Monospaced Typeface. If monospaced typeface is used, a principal
42 brief may not exceed 40 pages, and a reply brief may not exceed ten pages, excluding the

43 table of contents, the table of citations, and any addendum.

44 (C) Word and Page Limit for N.D.R.Civ.P. 54(b) Certification. If proportionately
45 spaced typeface is used, an argument on N.D.R.Civ.P. 54(b) certification may not exceed
46 2,500 words. If monospaced typeface is used, an argument may not exceed 10 pages. Word
47 and page limits for Rule 54(b) certification are in addition to the limits set forth in (7)(A) and
48 (7)(B).

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

51 (1) the cover of a separately bound appendix must be white; (2) an appendix may
52 include a legible photocopy of any document found in the record of a printed judicial or
53 agency decision; (3) pages in the appendix must be consecutively numbered; (4) an appendix
54 may be prepared with double sided pages.

55 The appendix must be 8½ by 11 inches in size. Documents of a size other than 8½ by 11
56 inches may be included in the appendix but must be folded or placed in a file or folder within
57 the 8½ by 11 inch appendix.

58 (c) Form of Other Papers.

59 (1) Motion. Rule 27 governs motion content. The form of all motion papers must
60 comply with the requirements of paragraph (c)(3) below.

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

62 (3) Other Papers. Any other paper must be reproduced in the manner prescribed by
63 subdivision (a), with the following exceptions:

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

66 (B) Paragraph (a)(7) does not apply.

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

68 EXPLANATORY NOTE

69 Rule 32 was amended, effective March 1, 1996; amended effective September 11,
70 1996, subject to comment; final adoption on October 23, 1996; amended effective August
71 1, 2001; March 1, 2003; March 1, 2007; March 1, 2008; _____.

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

74 Rule 32 was revised, effective March 1, 2003, in response to the December 1, 1998,
75 amendments to Fed.R.App.P. 32. The language and organization of the rule were changed
76 to make the rule more easily understood and to make style and terminology consistent
77 throughout the rules.

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

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

82 Paragraphs (a)(6) and (a)(7), which include type style requirements and page and
83 type-volume limitations, were adopted, effective March 1, 2003. These limitations were
84 moved to this rule from Rule 28 and generally do not follow the federal format requirements.

85 As used in paragraph (a)(6), "plain, roman style" does not include italicized, bold, or cursive
86 type-styles.

87 Paragraph (a)(7), effective March 1, 2003, limits the length of a brief. A person may
88 rely on the word or line count of the word-processing system used to prepare the brief.

89 Subparagraph (a)(7)(C) was adopted, effective _____, to limit the
90 length of an argument on N.D.R.Civ.P. 54(b) certification.

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

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

97 Sources: Joint Procedure Committee Minutes of _____; April 26-27,
98 2007, page 18; January 25, 2007, page 19; September 22-23, 2005, page 27; January 24-25,
99 2002, pages 7-9; September 27-28, 2001, pages 23-25; April 26-27, 2001, page 9; April
100 27-28, 1995, pages 15-17; May 25-26, 1978, pages 17-18; January 12-13, 1978, pages 20-22.
101 Fed.R.App.P. 32, 3.13(e) and 3.31, ABA Standards Relating to Appellate Courts (Approved
102 Draft, 1977).

103 Statutes Affected:

104 Superseded: N.D.C.C. § 29-28-19.

105 Cross Reference: N.D.R.App.P. 27 (Motions); N.D.R.App.P. 28 (Briefs);

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- 106 N.D.R.App.P. 29 (Brief of an Amicus Curiae); N.D.R.App.P. 30 (Appendix to the Briefs);
- 107 N.D.R.App.P. 40 (Petition for Rehearing).

RULE 41. ACCESS TO COURT RECORDS

Section 1. Purpose.

The purpose of this rule is to provide a comprehensive framework for public access to court records. Every member of the public will have access to court records as provided in this rule.

Section 2. Definitions.

(a) "Court record," regardless of the form, includes:

(1) any document, information, or other thing that is collected, received, or maintained by court personnel in connection with a judicial proceeding;

(2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by court personnel that is related to a judicial proceeding; and

(3) information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) "Court record" does not include:

(1) other records maintained by the public official who also serves as clerk of court;

(2) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in this rule;

(3) a record that has been disposed of under court records management rules.

22 (c) "Public access" means that the public may inspect and obtain a copy of the
23 information in a court record.

24 (d) "Remote access" means the ability to electronically search, inspect, or copy
25 information in a court record without the need to physically visit the court facility where the
26 court record is maintained.

27 (e) "Bulk distribution" means the distribution of all, or a significant subset, of the
28 information in court records, as is and without modification or compilation.

29 (f) "Compiled information" means information that is derived from the selection,
30 aggregation or reformulation by the court of some of the information from more than one
31 individual court record.

32 (g) "Electronic form" means information in a court record that exists as:

33 (1) electronic representations of text or graphic documents;

34 (2) an electronic image, including a video image, of a document, exhibit or other
35 thing;

36 (3) data in the fields or files of an electronic database; or

37 (4) an audio or video recording, analog or digital, of an event or notes in an electronic
38 file from which a transcript of an event can be prepared.

39 Section 3. General Access Rule.

40 (a) Public Access to Court Records.

41 (1) Information in the court record is accessible to the public except as prohibited by
42 this rule.

43 (2) There must be a publicly accessible indication of the existence of information in
44 a court record to which access has been prohibited, which indication may not disclose the
45 nature of the information protected.

46 (3) A court may not adopt a more restrictive access policy or otherwise restrict access
47 beyond that provided for in this rule, nor provide greater access than that provided for in this
48 rule.

49 (b) When Court Records May Be Accessed.

50 (1) Court records in a court facility must be available for public access during normal
51 business hours. Court records in electronic form to which the court allows remote access will
52 be available for access subject to technical systems availability.

53 (2) Upon receiving a request for access to information, the clerk of court shall respond
54 as promptly as practical. If a request cannot be granted promptly, or at all, an explanation
55 must be given to the requestor as soon as possible. The requesting person has a right to at
56 least the following information: the nature of any problem preventing access and the specific
57 statute, federal law, or court or administrative rule that is the basis of the denial. The
58 explanation must be in writing if desired by the requestor.

59 (c) Access to Court Records Filed Before March 1, 2009. Court records filed before
60 the adoption of N.D.R.Ct. 3.4 may contain protected information listed under N.D.R.Ct.
61 3.4(a). This rule does not require the review and redaction of protected information from a
62 court record that was filed before the adoption of N.D.R.Ct. 3.4 on March 1, 2009.

63 (e)(d) Fees for Access. The court may charge a fee for access to court records in

64 electronic form, for remote access, for bulk distribution or for compiled information. To the
65 extent that public access to information is provided exclusively through a vendor, the court
66 will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

67 Section 4. Methods of Access to Court Records.

68 (a) Access to Court Records at Court Facility.

69 (1) Request for Access. Any person desiring to inspect, examine, or copy a court
70 record shall make an oral or written request to the clerk of court. If the request is oral, the
71 clerk may require a written request if the clerk determines that the disclosure of the record
72 is questionable or the request is so involved or lengthy as to need further definition. The
73 request must clearly identify the record requested so that the clerk can locate the record
74 without doing extensive research. Continuing requests for a document not yet in existence
75 may not be considered.

76 (2) Response to Request. The clerk of court is not required to allow access to more
77 than ten files per day per requestor but may do so in the exercise of the clerk's discretion if
78 the access will not disrupt the clerk's primary function. If the request for access and
79 inspection is granted, the clerk may set reasonable time and manner of inspection
80 requirements that ensure timely access while protecting the integrity of the records and
81 preserving the affected office from undue disruption. The inspection area must be within full
82 view of court personnel whenever possible. The person inspecting the records may not leave
83 the court facility until the records are returned and examined for completeness.

84 (3) Response by Court. If a clerk of court determines there is a question about whether

85 a record may be disclosed, or if a written request is made under Section 6(b) for a ruling by
86 the court after the clerk denies or grants an access request, the clerk shall refer the request
87 to the court for determination. The court must use the standards listed in Section 6 to
88 determine whether to grant or deny the access request.

89 (b) Remote Access to Court Records. The following information in court records must
90 be made remotely accessible to the public if it exists in electronic form, unless public access
91 is restricted under this rule:

92 (1) litigant/party indexes to cases filed with the court;

93 (2) listings of new case filings, including the names of the parties;

94 (3) register of actions showing what documents have been filed in a case;

95 (4) calendars or dockets of court proceedings, including the case number and caption,
96 date and time of hearing, and location of hearing;

97 (5) judgments, orders, or decrees in a case and liens affecting title to real property;

98 (6) reports specifically developed for electronic transfer approved by the state court
99 administrator and reports generated in the normal course of business, if the report does not
100 contain information that is excluded from public access under Section 5 or 6.

101 (c) Requests for Bulk Distribution of Court Records.

102 (1) Bulk distribution of information in the court record is permitted for court records
103 that are publicly accessible under Section 3(a).

104 (2) A request for bulk distribution of information not publicly accessible can be made
105 to the court for scholarly, journalistic, political, governmental, research, evaluation or

106 statistical purposes where the identification of specific individuals is ancillary to the purpose
107 of the inquiry. Prior to the release of information under this subsection the requestor must
108 comply with the provisions of Section 6.

109 (3) A court may allow a party to a bulk distribution agreement access to birth date,
110 street address, and social security number information if the party certifies that it will use the
111 data for legitimate purposes as permitted by law.

112 (d) Access to Compiled Information From Court Records.

113 (1) Any member of the public may request compiled information that consists solely
114 of information that is publicly accessible and that is not already in an existing report. The
115 court may compile and provide the information if it determines, in its discretion, that
116 providing the information meets criteria established by the court, that the resources are
117 available to compile the information and that it is an appropriate use of public resources. The
118 court may delegate to its staff or the clerk of court the authority to make the initial
119 determination to provide compiled information.

120 (2) Requesting compiled restricted information.

121 (A) Compiled information that includes information to which public access has been
122 restricted may be requested by any member of the public only for scholarly, journalistic,
123 political, governmental, research, evaluation, or statistical purposes.

124 (B) The request must:

125 (i) identify what information is sought,

126 (ii) describe the purpose for requesting the information and explain how the

127 information will benefit the public interest or public education, and

128 (iii) explain provisions for the secure protection of any information requested to which
129 public access is restricted or prohibited.

130 (C) The court may grant the request and compile the information if it determines that
131 doing so meets criteria established by the court and is consistent with the purposes of this
132 rule, the resources are available to compile the information, and that it is an appropriate use
133 of public resources.

134 (D) If the request is granted, the court may require the requestor to sign a declaration
135 that:

136 (i) the data will not be sold or otherwise distributed, directly or indirectly, to third
137 parties, except for journalistic purposes,

138 (ii) the information will not be used directly or indirectly to sell a product or service
139 to an individual or the general public, except for journalistic purposes, and

140 (iii) there will be no copying or duplication of information or data provided other than
141 for the stated scholarly, journalistic, political, governmental, research, evaluation, or
142 statistical purpose.

143 The court may make such additional orders as may be needed to protect information
144 to which access has been restricted or prohibited.

145 Section 5. Court Records Excluded From Public Access.

146 The following information in a court record is not accessible to the public:

147 (a) Information that is not accessible to the public under federal law.

148 (b) Information that is not accessible to the public under state law, court rule, case law
149 or court order, including:

150 (1) affidavits or sworn testimony and records of proceedings in support of the issuance
151 of a search or arrest warrant pending the return of the warrant;

152 (2) information in a complaint and associated arrest or search warrant to the extent
153 confidentiality is ordered by the court under Section 29-05-32 or 29-29-22, NDCC;

154 (3) documents filed with the court for in-camera examination pending disclosure;

155 (4) domestic violence protection order files and disorderly conduct restraining order
156 files when the restraining order is sought due to domestic violence, except for orders of the
157 court;

158 (5) names of qualified or summoned jurors and contents of jury qualification forms
159 if disclosure is prohibited or restricted by order of the court;

160 (6) sexually explicit material or property that is evidence in a case;

161 (7) records of deferred impositions of sentences resulting in dismissal;

162 (8) unless exempted from redaction by N.D.R.Ct. 3.4(b)(c), personal protected
163 information:

164 – except for the last four digits, social security numbers, taxpayer identification
165 numbers, and financial account numbers,

166 – except for the year, birth dates, and

167 – except for the initials, the name of an individual known to be a minor, unless the
168 minor is a party, and there is no statute, regulation, or rule mandating nondisclosure; and;

169 ~~=in criminal cases, the home street address of an individual;~~

170 (9) judge and court personnel work material, including personal calendars,
171 communications from law clerks, bench memoranda, notes, work in progress, draft
172 documents and non-finalized documents.

173 (c) This rule does not preclude access to court records by the following persons in the
174 following situations:

175 (1) federal, state, and local officials, or their agents, examining a court record in the
176 exercise of their official duties and powers.

177 (2) parties to an action and their attorneys examining the court file of the action,
178 unless restricted by order of the court, but parties and attorneys may not access judge and
179 court personnel work material in the court file.

180 (d) A member of the public may request the court to allow access to information
181 excluded under Section 5 as provided in Section 6.

182 Section 6. Requests to Prohibit Public Access to Information in Court Records or to
183 Obtain Access to Restricted Information.

184 (a) Request to Prohibit Access.

185 (1) A request to the court to prohibit public access to information in a court record
186 may be made by any party to a case, by the individual about whom information is present in
187 the court record, or on the court's own motion on notice as provided in Section 6(c).

188 (2) The court must decide whether there are sufficient grounds to overcome the
189 presumption of openness of court records and prohibit access according to applicable

190 constitutional, statutory and case law.

191 (3) In deciding whether to prohibit access the court must consider that the presumption
192 of openness may only be overcome by an overriding interest. The court must articulate this
193 interest along with specific findings sufficient to allow a reviewing court to determine
194 whether the closure order was properly entered.

195 (4) The closure of the records must be no broader than necessary to protect the
196 articulated interest. The court must consider reasonable alternatives to closure, such as
197 redaction or partial closure, and the court must make findings adequate to support the
198 closure. The court may not deny access only on the ground that the record contains
199 confidential or closed information.

200 (5) In restricting access the court must use the least restrictive means that will achieve
201 the purposes of this rule and the needs of the requestor.

202 (b) Request to Obtain Access.

203 (1) A request to obtain access to information in a court record to which access is
204 prohibited under Section 4(a), 5 or 6(a) may be made to the court by any member of the
205 public or on the court's own motion on notice as provided in Section 6(b)(c).

206 (2) In deciding whether to allow access, the court must consider whether there are
207 sufficient grounds to overcome the presumption of openness of court records and continue
208 to prohibit access under applicable constitutional, statutory and case law. In deciding this the
209 court must consider the standards outlined in Section 6(a).

210 (c) Form of Request.

211 (1) The request must be made by a written motion to the court.

212 (2) The requestor shall give notice to all parties in the case.

213 (3) The court may require notice to be given by the requestor or another party to any
214 individuals or entities identified in the information that is the subject of the request. When
215 the request is for access to information to which access was previously prohibited under
216 Section 6(a), the court must provide notice to the individual or entity that requested that
217 access be prohibited.

218 Section 7. Obligations Of Vendors Providing Information Technology Support To
219 A Court To Maintain Court Records.

220 (a) If the court contracts with a vendor to provide information technology support to
221 gather, store, or make accessible court records, the contract will require the vendor to comply
222 with the intent and provisions of this rule. For purposes of this section, "vendor" includes a
223 state, county or local governmental agency that provides information technology services to
224 a court.

225 (b) By contract the vendor will be required to notify the court of any requests for
226 compiled information or bulk distribution of information, including the vendor's requests for
227 such information for its own use.

228 EXPLANATORY NOTE

229 Adopted on an emergency basis effective October 1, 1996; Amended and adopted
230 effective November 12, 1997; March 1, 2001; July 1, 2006 March 1, 2009; March 15, 2009;
231 _____; Appendix amended effective August 1, 2001, to reflect the name change

232 of State Bar Board to State Board of Law Examiners.

233 Section 3(c) was adopted, effective _____, to state that protected
234 information may be contained in court records filed before the adoption of N.D.R.Ct. 3.4.

235 Section 4(c) was amended, effective March 15, 2009, to allow parties who enter into
236 bulk distribution agreements with the courts to have access to birth date, street address, and
237 social security number information upon certifying compliance with laws governing the
238 security of personal protected information. Such laws include the Federal Fair Credit
239 Reporting Act, the Gramm Leach Bliley Act, the USA Patriot Act and the Driver's Privacy
240 Protection Act.

241 Section 5(b)(8) was amended, effective March 15, 2009, to list types of personal
242 protected information open to the public.

243 The term "financial-account number" in Section 5(b)(8) includes any credit, debit or
244 electronic fund transfer card number, and any other financial account number.

245 Section 5(b)(8) was amended, effective _____, to incorporate the
246 exemptions from redaction contained in N.D.R.Ct. 3.4(b). A document containing protected
247 information that is exempt from redaction under N.D.R.Ct. 3.4(b) is accessible to the public.

248 HISTORY: Joint Procedure Committee Minutes of September 24-25, 2009, pages
249 _____ ; May 21-22, 2009, pages 28-44; January 29-20, 2009, pages 3-4; September 25, 2008,
250 pages 2-6; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27,
251 2007, page 31; September 22-23, 2005, pages 6-16; April 28-29, 2005, pages 22-25; Court
252 Technology Committee Minutes of June 18, 2004; March 19, 2004; September 12, 2003;

253 Conference of Chief Justices/Conference of State Court Administrators: Guidelines for
254 Public Access to Court Records.
255 CROSS REFERENCE: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made With the
256 Court).