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2 RULE 5.1. ~~{RESERVED}~~ RECEIVERS

3 ~~{Reserved for future use}.~~

4 (a) Qualification of receivers. Receivers shall meet the qualifications set out by statute. See
5 N.D.C.C. ch. 32-10.

6 (b) Attorneys for receivers -- Application. An attorney for the receiver may be employed only
7 upon order of the court, upon written motion of the receiver stating the reasons for the requested
8 employment and naming the attorney to be employed, who must not be interested in the action as
9 attorney for any party without the written consent of the opposing parties filed with the clerk.

10 (c) Inventories of receivers. Not later than thirty days after his appointment, the receiver shall
11 file with the court a detailed report and inventory of all property, real or personal, of the estate,
12 designating the property within his possession or control.

13 (d) Appraisal for receivers.

14 (1) Appraisers. Appraisers for receivers may be appointed by the court.

15 (2) Appraisal by receiver. If no appraisers are appointed, the receiver shall investigate the
16 value of the several items listed as disclosed by the investigation.

17 (e) Reports of receivers.

18 (1) Time of filing. The receiver shall file one report each year, the first report twelve months
19 after the appointment, and annually thereafter. Special reports may be ordered by the court, and a
20 final report must be filed upon the termination of the proceedings.

21 (2) Forms. The court may prescribe forms to be used for reports of a receiver.

22 (3) Fee. Application for fees of a receiver or his attorney, except by leave of the court, may
23 be made only at the time of the filing of a receiver's report.

24

EXPLANATORY NOTE

25

The content of Rule 5.1 was transferred from Rule 8.1, effective March 1, 2013.

RULE 1. SCOPE AND EXCEPTIONS

(a) Scope. These rules govern the practice and procedure in all criminal proceedings in the district courts and, so far as applicable, in all other courts, including prosecutions for violations of municipal ordinances and prosecutions for contempt when punitive sanctions are sought in a nonsummary proceeding.

(b) Excepted proceedings.

(1) Habeas corpus. These rules do not apply to proceedings on any application for a writ of habeas corpus under N.D.C.C. ch. 32-22 or N.D.C.C. ch. 25-03.1 nor to other habeas corpus proceedings authorized by law.

(2) Peace bonds. These rules do not alter the power of magistrates authorized by law to act within the county to take and hold security for the prevention of a public offense or of a district judge to dispose of such peace bonds as provided by N.D.C.C. ch. 29-02. However, these rules apply to procedure under N.D.C.C. ch. 29-02, so far as they are consistent with this chapter.

(3) Commitment proceedings. These rules do not apply to proceedings for determining whether a proposed patient should be ordered committed to the state hospital at Jamestown or any other hospital or school under N.D.C.C. title 25 or other laws.

(4) Other proceedings. These rules do not apply to:

(A) extradition and rendition of fugitives;

(B) forfeiture of property for violation of a statute of this state;

22 (C) the collection of fines and penalties; or

23 (D) proceedings under the Uniform Juvenile Court Act, N.D.C.C. ch. 27-20.

24 EXPLANATORY NOTE

25 Rule 1 was amended, effective March 1, 1992; March 1, 1994; March 1, 2006; March
26 1, 2009; March 1, 2013.

27 Rule 1 defines the scope of the North Dakota Rules of Criminal Procedure. These
28 rules are designed primarily for the district courts, but are also designed to provide the
29 necessary machinery for all state courts with original jurisdiction. This includes municipal
30 court prosecutions for violations of municipal ordinances. The rules apply to all criminal
31 proceedings, and the term "proceedings" includes all possible steps in the case from its
32 inception to judgment and sentence. Although the vast bulk of statutory procedure is
33 superseded by the rules, statutes containing procedure beyond the scope of a rule, but
34 possibly supplemental to the procedure under a rule, are listed as "considered." (see Table
35 of Statutes Affected).

36 Subdivision (b) lists proceedings that are not governed by these rules.

37 Paragraph (b)(1) recognizes that habeas corpus is not a criminal proceeding but an
38 independent and collateral inquiry into the validity of a conviction. See N.D.C.C. chs. 32-22,
39 25-03.1.

40 Paragraph (b)(2) provides that these rules shall apply to peace bond procedures when
41 this is consistent with N.D.C.C. ch. 29-02.

42 Paragraph (b)(3) excludes commitment proceedings from these rules. See N.D.C.C.

43 tit. 25.

44 Paragraph (b)(4) excludes certain other procedures which are either civil in nature or
45 cannot be classified as either civil or criminal, including:

46 (1) extradition or rendition of fugitives (N.D.C.C. ch. 29-30.3);

47 (2) the collection of fines and penalties (see N.D.R.Civ.P. 69); and

48 (3) proceedings under the Uniform Juvenile Court Act (see N.D.C.C. ch. 27-20).

49 Paragraph (b)(4) was amended, effective March 1, 2009, to delete a reference to
50 paternity actions, which are wholly civil in nature under N.D.C.C. ch. 14-20.

51 Rule 1 was amended, effective March 1, 1992. The phrase "by statute and" was
52 deleted to eliminate the conflict that occasionally occurred between rules and statutes. The
53 amendment was not intended to delete any procedural rules in statutes that are not covered
54 by court rules.

55 Rule 1 was amended, effective March 1, 1994, to provide that these rules apply to
56 nonsummary contempt proceedings when punitive sanctions are sought.

57 Rule 1 was amended, effective March 1, 2006, in response to the December 1, 2002,
58 revision of the Federal Rules of Criminal Procedure. The language and organization of the
59 rule were changed to make the rule more easily understood and to make style and
60 terminology consistent throughout the rules. As part of this amendment, subdivision (b) was
61 transferred to Rule 1 from Rule 54.

62 Sources: Joint Procedure Committee Minutes of April 24-25, 2008, pages 11-12; April
63 28-29, 2005, page 13; April 29-30, 1993, pages 2-3; October 29-30, 1992, page 7; November

64 7-8, 1991, page 14; January 27-29, 1972, pages 1-3; January 26-27, 1968, page 1; November
65 17-18, 1967, page 1; Fed.R.Crim.P. 1.

66 Statutes Affected:

67 Superseded: N.D.C.C. § 40-18-11.

68 Considered: N.D.C.C. chs. 14-20, 25-03.1, 25-03.2, 25-03.3, 25-04, 27-20, 29-02, 32-
69 22.

70 Cross Reference: N.D.R.Civ.P. 69 (Execution); N.D.R.Ct. ~~8-10~~ 5.2 (Writs).

RULE 66. RECEIVERS

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. The practice in administering an estate by a receiver or a similar court-appointed officer must accord with state statute or with a local rule. A foreign receiver has capacity to sue in any district court, but the receiver's rights are subordinate to those of local creditors. An action in which a receiver has been appointed may be dismissed only by court order.

EXPLANATORY NOTE

Rule 66 was amended, effective March 1, 2011; March 1, 2013.

Rule 66 is derived from Fed.R.Civ.P. 66.

Rule 66 was amended, effective March 1, 2011, in response to the December 1, 2007, revision of the Federal Rules of Civil Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Sources: Joint Procedure Committee Minutes of April 29-30, 2010, pages 28-29; January 28-29, 2010, pages 14-15; January 17-18, 1980, page 6; Fed.R.Civ.P. 66.

Cross Reference: N.D.R.Civ.P. 17 (Parties Plaintiff and Defendant-Capacity), N.D.R.Ct. ~~8.1~~ 5.1 (Receivers).

RULE 5.2. EXTRAORDINARY WRITS

(a) General Provisions.

(1) This rule applies to petitions for relief under the writs of habeas corpus, certiorari, mandamus, prohibition and quo warranto.

(2) A person seeking relief will be designated as the petitioner. All parties to the proceeding other than the petitioner will be designated as respondents.

(3) Except as they are inconsistent or in conflict with statute or this rule, the Rules of Civil Procedure apply to proceedings under this rule in district court and the Rules of Appellate Procedure apply to proceedings under this rule in the supreme court.

(b) Application Procedure.

(1) A party seeking relief must file a verified petition with the appropriate court clerk.

(2) The petition must state:

(A) the relief sought;

(B) the issues presented;

(C) the facts necessary to understand the issues presented; and

(D) the reasons why a writ should issue and why relief should be granted.

(3) The petition must include a copy of any order or opinion or parts of the record that are necessary to understand the matters set forth in the petition. If a petition is supported by briefs, affidavits, or other papers, they must be filed with the petition.

(4) A copy of the petition must be served on the respondents.

22 (c) Action by Court.

23 (1) The court may deny a petition, or grant preliminary relief to a petitioner, without
24 requiring a response or holding a hearing.

25 (2) The court may not grant final relief to a petitioner without giving all parties an
26 opportunity to respond to the petition or to show cause why the requested relief should not
27 be granted.

28 (3) The court may make appropriate orders, including:

29 (A) allowing amendment of the petition or any response or motion;

30 (B) allowing additional amendments, responses or motions;

31 (C) extending the time for filing any amendment, response or motion.

32 (4) At any time before the entry of a final order or grant of final relief, the court may,
33 for good cause, grant leave to withdraw the petition without prejudice.

34 (5) The court may, for good cause, grant leave to use discovery procedures to the
35 petitioner or any respondent. Discovery procedures may be used only to the extent and in the
36 manner the court has ordered or to which the parties have agreed.

37 (6) The court may hold a hearing on a petition on its own motion or upon request of
38 any party.

39 EXPLANATORY NOTE

40 The content of Rule 5.2 was transferred from Rule 8.10, effective March 1, 2013.
41 Rule 8.10 was originally adopted, effective March 1, 2005.

42 Article VI of the North Dakota Constitution gives the supreme court and the district

43 courts the power to issue writs and to grant relief. The North Dakota Century Code defines
44 the types of preliminary and final relief that may be obtained through statutory writ
45 proceedings. See N.D.C.C. chs. 32-13 (writ of quo warranto); 32-22 (writ of habeas corpus);
46 32-33 (writ of certiorari); 32-34 (writ of mandamus); 32-35 (writ of prohibition).

47 The Rules of Civil Procedure govern writ proceedings to the extent provided by
48 paragraph (a)(3) of this rule. Under N.D.R.Civ.P. 81, when statutory writ procedure is
49 inconsistent or in conflict with the Rules of Civil Procedure, the statutory procedure governs.

50 Sources: Joint Procedure Committee Minutes of January 29-30, 2004, page 13;
51 September 18-19, 2003, pages 19-24; April 24-25, 2003, pages 4-6; January 30-31, 2003,
52 pages 18-20; September 26-27, 2002, pages 18-20.

53 Statutes Affected:

54 Superseded: N.D.C.C. §§ 32-32-02, 32-32-04, 32-32-05, 32-32-06; 32-33-02.

55 Considered: N.D.C.C. §§ 32-13-01; 32-13-02; 32-13-03; 32-13-04; 32-13-06; 32-13-
56 07; 32-13-08; 32-13-09; 32-13-10; 32-13-11; 32-22-01; 32-22-02; 32-22-03; 32-22-04; 32-
57 22-05; 32-22-06; 32-22-07; 32-22-08; 32-22-09; 32-22-10; 32-22-11; 32-22-12; 32-22-13;
58 32-22-14; 32-22-15; 32-22-16; 32-22-17; 32-22-18; 32-22-19; 32-22-20; 32-22-21; 32-22-22;
59 32-22-23; 32-22-24; 32-22-25; 32-22-26; 32-22-27; 32-22-28; 32-22-29; 32-22-30; 32-22-31;
60 32-22-32; 32-22-33; 32-22-34; 32-22-35; 32-22-36; 32-22-37; 32-22-38; 32-22-39; 32-22-40;
61 32-22-41; 32-22-42; 32-22-43; 32-32-01, 32-32-03, 32-33-01; 32-33-03; 32-33-04; 32-33-05;
62 32-33-06; 32-33-07; 32-33-08; 32-33-09; 32-33-10; 32-33-11; 32-33-12; 32-34-01; 32-34-
63 01.1; 32-34-02; 32-34-03; 32-34-04; 32-34-05; 32-34-06; 32-34-07; 32-34-08; 32-34-09; 32-

64 34-10; 32-34-11; 32-34-12; 32-34-13; 32-35-01; 32-35-02; 32-35-03; 32-35-04.

65 Cross Reference: N.D.R.Civ.P. 81 (Applicability -- In General); N.D.R.App.P. 21

66 (Supervisory Writs); N.D.Sup.Ct.Admin.R. 27 (Court of Appeals).

RULE 8.10. EXTRAORDINARY WRITS [RESERVED]

~~(a) General Provisions:~~

~~(1) This rule applies to petitions for relief under the writs of habeas corpus, certiorari, mandamus, prohibition and quo warranto:~~

~~(2) A person seeking relief will be designated as the petitioner. All parties to the proceeding other than the petitioner will be designated as respondents:~~

~~(3) Except as they are inconsistent or in conflict with statute or this rule, the Rules of Civil Procedure apply to proceedings under this rule in district court and the Rules of Appellate Procedure apply to proceedings under this rule in the supreme court:~~

~~(b) Application Procedure:~~

~~(1) A party seeking relief must file a verified petition with the appropriate court clerk:~~

~~(2) The petition must state:~~

~~(A) the relief sought;~~

~~(B) the issues presented;~~

~~(C) the facts necessary to understand the issues presented; and~~

~~(D) the reasons why a writ should issue and why relief should be granted:~~

~~(3) The petition must include a copy of any order or opinion or parts of the record that are necessary to understand the matters set forth in the petition. If a petition is supported by briefs, affidavits, or other papers, they must be filed with the petition:~~

~~(4) A copy of the petition must be served on the respondents:~~

22 ~~(c) Action by Court:~~

23 ~~(1) The court may deny a petition, or grant preliminary relief to a petitioner, without~~
24 ~~requiring a response or holding a hearing.~~

25 ~~(2) The court may not grant final relief to a petitioner without giving all parties an~~
26 ~~opportunity to respond to the petition or to show cause why the requested relief should not~~
27 ~~be granted.~~

28 ~~(3) The court may make appropriate orders, including:~~

29 ~~(A) allowing amendment of the petition or any response or motion;~~

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31 ~~(C) extending the time for filing any amendment, response or motion.~~

32 ~~(4) At any time before the entry of a final order or grant of final relief, the court may,~~
33 ~~for good cause, grant leave to withdraw the petition without prejudice.~~

34 ~~(5) The court may, for good cause, grant leave to use discovery procedures to the~~
35 ~~petitioner or any respondent. Discovery procedures may be used only to the extent and in the~~
36 ~~manner the court has ordered or to which the parties have agreed.~~

37 ~~(6) The court may hold a hearing on a petition on its own motion or upon request of~~
38 ~~any party.~~

39 [Reserved for future use].

40 EXPLANATORY NOTE

41 The former content of Rule 8.10 was transferred to Rule 5.2, effective March 1,
42 2013 adopted, effective March 1, 2005.

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52 ~~18-19, 2003, pages 19-24; April 24-25, 2003, pages 4-6; January 30-31, 2003, pages 18-20;~~
53 ~~September 26-27, 2002, pages 18-20.~~

54 ~~Statutes Affected:~~

55 ~~Superseded: N.D.C.C. §§ 32-32-02, 32-32-04, 32-32-05, 32-32-06, 32-33-02.~~

56 ~~Considered: N.D.C.C. §§ 32-13-01, 32-13-02, 32-13-03, 32-13-04, 32-13-06, 32-13-~~
57 ~~07, 32-13-08, 32-13-09, 32-13-10, 32-13-11, 32-22-01, 32-22-02, 32-22-03, 32-22-04, 32-~~
58 ~~22-05, 32-22-06, 32-22-07, 32-22-08, 32-22-09, 32-22-10, 32-22-11, 32-22-12, 32-22-13,~~
59 ~~32-22-14, 32-22-15, 32-22-16, 32-22-17, 32-22-18, 32-22-19, 32-22-20, 32-22-21, 32-22-22,~~
60 ~~32-22-23, 32-22-24, 32-22-25, 32-22-26, 32-22-27, 32-22-28, 32-22-29, 32-22-30, 32-22-31,~~
61 ~~32-22-32, 32-22-33, 32-22-34, 32-22-35, 32-22-36, 32-22-37, 32-22-38, 32-22-39, 32-22-40,~~
62 ~~32-22-41, 32-22-42, 32-22-43, 32-32-01, 32-32-03, 32-33-01, 32-33-03, 32-33-04, 32-33-05,~~
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64 01.1; ~~32-34-02; 32-34-03; 32-34-04; 32-34-05; 32-34-06; 32-34-07; 32-34-08; 32-34-09; 32-~~
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~~(1) Time of filing. The receiver shall file one report each year, the first report twelve months after the appointment, and annually thereafter. Special reports may be ordered by the court, and a final report must be filed upon the termination of the proceedings.~~

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