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FEB 15 2008

TO: Supreme Court

STATE OF NORTH DAKOTA

FROM: Mike Hagburg

RE: N.D.R.Civ.P. 40 (Assignment of Cases For Trial)

DATE: Feb. 15, 2008

Amendments to Rule 40 will take effect March 1, 2008. The major amendment was removal of the Note of Issue/Certificate of Readiness requirement.

During discussion of this amendment, the Note of Issue/Certificate of Readiness form was discussed and the consensus of the court was that this form should be deleted. I was not able to locate this form in the rules and concluded it had already been deleted.

While working to integrate the March 1 amendments into the web-based rules, I found the Note of Issue/Certificate of Readiness Form. It was hiding in plain sight, appended to the end of the rule — this is also where the West and Lexis versions of the form are located. There is also a paragraph in the rule's explanatory note that references the Note of Issue/Certificate of Readiness requirement that seems no longer necessary.

I recommend that the Court make a technical amendment to Rule 40 to delete the now superfluous form and explanatory note reference. I have attached a copy of Rule 40 with the approved amendments integrated and the proposed technical amendments marked.



North Dakota Supreme Court Rules N.D.R.Civ.P. ◀▲□/?

Effective March 1, 2008  
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**RULE 40. ASSIGNMENT OF CASES FOR TRIAL**

**(a) Continuous Session of District Court.** The district court is in continuous session in each county. Criminal and civil cases will be scheduled for trial in accordance with a calendaring procedure maintained and operated under the direction and supervision of the presiding judge of the district.

**(b) [Deleted]**

**(c) Trial Dates.** All contested cases will be assigned trial dates by the trial judge under the direction and supervision of the presiding judge of the district.

**(d) Trial Date Continuances.** No continuance on trial dates will be given unless formally approved by the trial judge scheduled to hear the case. A request to continue a trial must be made within 10 days after receipt of notice of trial given by the court. If unavoidable circumstances should arise, the trial judge may consider waiving the 10-day requirement.

**(e) Untried Cases.** Actions or proceedings that have been pending and filed in which there has been a want of prosecution for more than one year may be dismissed without prejudice by the court on its own motion upon notice or on motion of either party.

**EXPLANATORY NOTE**

Rule 40 was amended effective July 1, 1981; January 1, 1988; August 1, 2004; March 1, 2008.

Rule 40 has the same purpose as Fed.R.Civ.P. 40.

Rule 40 was amended, effective March 1, 2008, to eliminate the note of issue and certificate of readiness requirement. Decisions on placement of cases on the trial calendar are made at Rule 16 scheduling conferences or as otherwise scheduled by the court.

Subdivision (a) provides for continuous session of district court, rather than distinct "terms" of court. The presiding judge is to oversee the calendaring process.

*Recommend deletion*

Subdivision (b) was amended, effective August 1, 2004, to add new language clarifying that filing a note of issue and certificate of readiness is not necessary when a scheduling order is issued.

Subdivision (e) provides for dismissal of untried cases after one year of inactivity, rather than after two years, as was the previous rule. Failure to file a Note of Issue and Certificate of Readiness within one year after the filing of the summons and complaint may also result in dismissal.

The rule was amended, effective January 1, 1988, to make the rule gender neutral.

SOURCES: Joint Procedure Committee Minutes of April 26-27, 2007, pages 14-15; September 18-19, 2003, pages 11-18; April 24-25, 2003, pages 26-30; November 7-8, 1991, page 5; October 25-26, 1990, page 16; January 23, 1986, pages 9-12; September 18-19, 1980, pages 13-14; May 29-30, 1980, pages 1-2, 6-11; March 27-28, 1980, pages 3-4; January 17-18, 1980, page 3; November 29-30, 1979, pages 9-10; Rule 40, FRCivP.

STATUTES AFFECTED:

SUPERSEDED: Sections 28-1207, 28-1208, 28-1212, NDRC 1943.

CROSS REFERENCE: N.D.R.Civ.P. 16 (Pretrial Conferences; Scheduling; Management); N.D.R.Crim.P. 50 (Calendars).

[TITLE OF CASE]NOTE OF ISSUE  
AND  
CERTIFICATE OF READINESS

TO THE ABOVE NAMED PARTIES:

YOU WILL PLEASE TAKE NOTICE, That the above-entitled action will be placed upon the calendar of the above named court 14 days after filing of this Note of Issue and Certificate of Readiness with the clerk of court, for trial of the issues.

I hereby certify to the best of my knowledge and belief that:

- A. Issues are joined.
- B. All discovery has been completed.
- C. All pretrial motions have been disposed of.
- D. Sufficient time has elapsed to afford all parties reasonable opportunity to be ready for trial.
- E. There are no present prospects for settlement.
- F. This case is ready for trial:

*Recommend  
deletion*

By a jury \_\_\_\_\_

Largest jury size demanded \_\_\_\_\_

As a bench trial \_\_\_\_\_

G. All pleadings of the filing attorney have been filed with the clerk of court.

H. The estimated length of trial is \_\_\_\_\_

I. The names and addresses of respective counsel are:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

\_\_\_\_\_

Attorney for

Address

Telephone

A party not ready for trial shall prepare a Certificate of Nonreadiness and shall serve the same on counsel for all parties and file it with the clerk of court within 10 days after the date of service of the Note of Issue and Certificate of Readiness.

The case will be placed on the trial calendar 14 days after the filing of this Note of Issue and Certificate of Readiness, or on the date specified in the Certificate of Nonreadiness, whichever is later unless otherwise ordered by the court upon motion.

[TITLE OF CASE} CERTIFICATE OF NONREADINESS

I HEREBY CERTIFY That the above-entitled action is not ready for trial in the following respects:

The above-entitled action will be ready for trial not later than \_\_\_\_\_ [date].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

\_\_\_\_\_

*Recommend deletion*

*Recommend  
deletion*

Attorney for  
Address  
Telephone

Any dispute with respect to the Certificate of Readiness or the Certificate of Nonreadiness must be brought before the court by motion of a party or the court. The court may impose appropriate sanctions, including payment of the reasonable expenses incurred in bringing the motion.

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