

Bruggman, Colette

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SUPREME COURT SEP 15 2008

From: Irby, John
Sent: Monday, September 15, 2008 2:53 PM
To: Bruggman, Colette
Subject: RE: Proposed Amendments to N.D.R.Civ.P., N.D.R.Crim.P., N.D.R.App.P., N.D.R.Ct., N.D.Sup.Ct.Admin.R., No. 20080201

Attachments: Rule 32.2 comments.doc



Rule 32.2
comments.doc (24 KB)

20080201

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 15 2008

STATE OF NORTH DAKOTA

From: Bruggman, Colette
Sent: Wednesday, August 20, 2008 11:47 AM
To: (ALL) Clerks of District Court; (ALL) District Court Judges; (ALL) Trial Court Administrative Personnel; (SUP) Supreme Court Staff
Cc: Bruce D. Quick; Daniel J. Dunn; Galen J. Mack; Jeanne L. McLean; Joanne Hager Ottmar; Larry L. Boschee; Richard H. McGee II; Ronald H. McLean; Stephen W. Plambeck
Subject: Proposed Amendments to N.D.R.Civ.P., N.D.R.Crim.P., N.D.R.App.P., N.D.R.Ct., N.D.Sup.Ct.Admin.R., No. 20080201

A Notice of Hearing regarding Proposed Amendments to the North Dakota Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, Rules of Court, and Supreme Court Administrative Rules has been posted to the Supreme Court's web page at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. This notice is provided under N.D.R.Proc.R. § 7.1.

Colette M. Bruggman
Chief Deputy Clerk
North Dakota Supreme Court

SEP 15 2008

Questions and comments regarding proposed changes to Rule 32.2.

STATE OF NORTH DAKOTA

I am generally in favor of proposed rule 32.2 that would allow pretrial diversion of criminal defendants under clearly defined circumstances. I am not sure, however, that without legislation allowing the DOCR to supervise the diverted defendants that this will be used in many cases. My concern is that diverted defendants will not be able to participate in adult drug court as that is a probation program and unless there is a conviction the DOCR can't supervise.

I have some other concerns:

It appears that from the rule the prosecution has to agree with the diversion. If a defendant meets all of the conditions set forth in the rule and applies for diversion does the court have the authority to order diversion over the prosecutor's objection? Would giving the prosecutor veto power be some type of prohibited delegation of the court's powers to the prosecutor?

If there is an agreement and the conditions are met can the court deny the application? What type of procedure would be involved to terminate the agreement? Will this have an impact on the workload of the public defenders?

What happens to the bail that was posted?

Are we looking at more hearings and more appeals?