

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

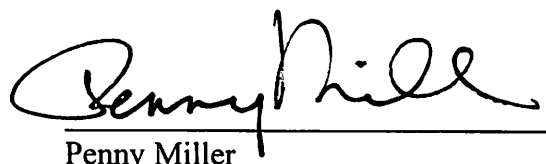
ORDER OF ADOPTION
Supreme Court No. 20100079

Amendments to North Dakota Rule of Appellate Procedure 12 and Appendix A

The Supreme Court considered amendments, sua sponte, to the North Dakota Rule of Appellate Procedure 12 to include a Petition for Waiver of Filing Fee upon Showing of Indigency as an Appendix.

ORDERED, that the amendments to North Dakota Rule of Appellate Procedure 12 and Appendix A are ADOPTED effective March 15, 2010.

The Supreme Court of the State of North Dakota convened March 10, 2010, with the Honorable Gerald W. Vandewalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller
Clerk
North Dakota Supreme Court

RULE 12. DOCKETING THE APPEAL

1 **(a) Time for Docketing Appeal and Payment of Docket Fee.** Upon receipt of the notice of
2 appeal, the supreme court clerk must docket the appeal. The appellant must deposit the docket
3 fee with the clerk of district court at the time the notice of appeal is filed. A check or money
4 order in the amount of the docket fee should be made payable to the supreme court clerk. If two
5 or more parties file separate notices of appeal, the first to file must pay the docket fee. A docket
6 fee is not required in the following cases:

7 (1) criminal cases;

8 (2) post-conviction relief;

9 (3) writs of habeas corpus filed by indigent defendants;

10 (4) mental health commitments where the appellant is indigent;

11 (5) juvenile cases where counsel is court-appointed;

12 (6) other civil cases where an indigent party is entitled to court-appointed counsel as a result
13 of the indigency;

14 (7) in any other case where an appellant has been declared indigent by order of any state court
15 for the purpose of any action relating to the appeal; and

16 (8) by order of the supreme court upon consideration of a Petition To Waive Filing Fee Upon
17 Showing Of Indigency (in the form shown in appendix A).

18 **(b) Dismissal for Failure of Appellant to Pay Docket Fee.** If the appellant fails to pay the
19 docket fee as required, the appellee may file a motion in the supreme court to dismiss the appeal.
20 The motion, accompanied by proof of service, must be supported by a certified copy of the
21 judgment or order from which the appeal was taken, and a certified copy of the notice of appeal

22 with the date of filing. The appellant may respond within 10 days after service of the motion.

23 EXPLANATORY NOTE

24 Rule 12 was amended, effective September 1, 1983; January 1, 1988; March 1, 1996; March 1,
25 2003.

26 The docket fee must be paid only once and is to be paid by the first to file a notice of appeal if
27 two or more parties file separate notices of appeal. The fee charged is found in N.D.C.C. §
28 27-03-05.

29 Rule 12 was amended, effective March 1, 2003. The language and organization of the rule were
30 changed to make the rule more easily understandable and to make style and terminology
31 consistent throughout the rules.

32 Rule 12 was amended, effective March 15, 2010 to refer to and provide the Petition To Waive
33 Filing Fee Upon Showing Of Indigency as Appendix A.

34 SOURCES: Joint Procedure Committee Minutes of April 26-27, 2001, page 10; September
35 29-30, 1994, pages 9-12; February 19-20, 1987, page 6; September 18-19, 1986, page 14;
36 February 17-18, 1983, pages 1-3; November 18-19, 1982, page 14; May 25-26, 1978, pages 9-10,
37 34-35; March 16-17, 1978, pages 4-5; October 27-28, 1977, pages 7-8; September 15-16, 1977,
38 page 19.

39 STATUTES AFFECTED:

40 SUPERSEDED: N.D.C.C. § 28-31-01.

41 CROSS REFERENCE: N.D.R.App.P. 3 (Appeal as of Right--How Taken) , N.D.R.App.P. 7
42 (Bond for Costs on Appeal in Civil Cases) , and N.D.R.App.P. 10 (The Record on Appeal) ;
43 N.D.C.C. §§ 27-01-07 (Civil action fees--waiver) , 27-03-05 (Docket fee).

44 **APPENDIX A. N.D.R.App.P. 12 Petition To Waive Filing Fee Upon Showing Of Indigency**

45

IN THE SUPREME COURT

46

STATE OF NORTH DAKOTA

47

_____, }

48

Plaintiff, }

49

} N.D.R.APP.P. 12

50

} PETITION TO WAIVE FILING FEE

51

} ON APPEAL AND AFFIDAVIT

52

vs. }

53

}

54

_____, }

Supreme Court No. _____

55

Defendant. }

56

Under section 27-01-07 of the North Dakota Century Code, _____ petitions

57

this Court for an order waiving the filing fee for this appeal.

58

I, _____, being first duly sworn, say:

59

I am the _____ (plaintiff or defendant) in this case. Because of my

60

poverty, I am unable to pay the filing fee on appeal. I believe I am entitled to redress, and the issues

61

that I wish to present on appeal are as follows: _____

62

63

64

65 _____

66 _____

67 _____

68 In further support of this petition, I answer the following questions:

69 1. Are you presently employed? Yes _____ No _____

70 (a) If the answer is yes, state your current salary or wages per month (list both
71 gross and net salary). _____

72 _____

73 _____

74 (b) If the answer is yes, state the name and address of your employer.

75 _____

76 _____

77 _____

78 (c) If the answer is no, state the date of last employment and the amount of salary
79 or wages per month which you received.

80 _____

81 _____

82 _____

83 2. Have you received, within the last 12 months, any income from any of the following
84 sources?

85 (a) Business, profession or other form of self-employment? Yes _____ No _____

86 (b) Rent payments, interest or dividends? Yes _____ No _____

87 (c) Pensions, annuities or life insurance payments? Yes _____ No _____

88 (d) Gifts or inheritances? Yes _____ No _____

89 (e) Any other sources? Yes _____ No _____

90 (f) If the answer to any of the above is yes, please state the sources of the additional
91 income and the amount that was received from each during the past 12 months.

92 _____

93 _____

94 _____

95 _____

96 _____

97 3. Do you own cash or have a checking or savings account? Yes _____ No _____

98 (a) If the answer to the above question is yes, please state the current balance in the
99 checking or savings account and the amount of cash on hand.

100 _____ (checking)

101 _____ (savings)

102 _____ (cash)

103 4. Do you currently own real estate, stocks, bonds, notes, an automobile, other valuable property,
104 excluding household furnishings and clothing? Yes _____ No _____

105 (a) If the answer to the above question is yes, please describe the property and state its
106 approximate value.

107 _____

108 _____

109 _____

110 5. List the persons who are dependent upon you for support, state your relationship to those

111 persons, and indicate how much you pay toward their monthly support.

112 _____

113 _____

114 _____

115 _____

116 _____

117 I declare under penalty of perjury that the foregoing is true and correct.

118 Dated this _____ day of _____, 20_____.

119 _____

120 Name

121 Address

122 City/State/Zip Code

123 Telephone number

124 _____

125 Notary Public

126 My Commission expires: _____

127 CERTIFICATE

128 (Prisoner Accounts Only)

129 I certify that the petitioner has the sum of \$ _____ on account at the

130 _____ institution where the petitioner is confined. I further certify that the

131 prisoner likewise has the following securities according to the records of said institution.

132 _____

133 _____

134
135

Authorized Officer of Institution

136

Dated: