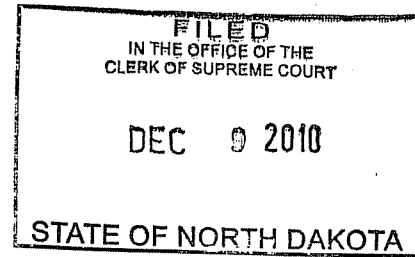


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SUPREME COURT

MEMO



TO:            North Dakota Supreme Court

FROM:         Mike Hagburg

RE:            N.D.R.Ct. 8.5, Domestic Relations Summary Proceedings

In reviewing the tape of the September 2010 Joint Procedure Committee meeting, I was reminded that the Committee made a small change to Rule 8.5. This rule is before the Court as part of the annual rules package. It appears that I neglected to inform the Committee of the possibility of bringing the change it approved to Rule 8.5 before the Court to be considered with the rest of the package. Given that the Court will be addressing the rules package again on Dec. 21, I wanted to make the Court aware of the Committee's proposed amendment to Rule 8.5. A copy of the Rule 8.5 proposal, with the September changes highlighted, is attached.

RULE 8.5 DOMESTIC RELATIONS SUMMARY PROCEEDING

(a) Definition and Application.

(1) A summary proceeding may be used by parties to settle a controversy, dispose of a case, or conduct a trial ~~where~~ when a party seeks an order, judgment, or amended judgment, ~~otherwise in accordance with chapters under N.D.C.C. chs. 14-04, 14-05, and 14-09, NDCC.~~

(2) A summary proceeding may be used when the combined net assets of the parties do not exceed a fair market value of ~~twenty thousand dollars~~ \$50,000, exclusive of the homestead, as defined ~~in section under N.D.C.C. § 47-18-01, NDCC.~~

(b) Beginning of Action - Petition - Summons - Plaintiff's Financial Affidavit. An action filed under this rule begins when any person signs and files with the court a petition and financial affidavit, and serves the petition and financial affidavit on the defendant along with a summons and order for appearance setting a hearing. The initial hearing must be held not less than ~~10~~ 14 days, nor more than 40 days after service of the order by the plaintiff on the defendant.

(c) Answer - Defendant's Financial Affidavit - Further Relief. The defendant ~~shall~~ must serve and file an answer and financial affidavit at least 2 days before the initial hearing, but no later than ~~20~~ 21 days after service of the order for appearance, or ~~the~~ the defendant ~~shall~~ must be considered in default. The defendant may set forth any new matter in the answer and request further relief.

(d) Case Not Suitable for Disposition by Summary Proceeding. Either party may elect

22 to use a non-summary proceeding, without a showing of cause, by filing a notice of election  
23 no later than ~~15~~ 21 days before the final hearing. If the court decides, based upon the  
24 complexity of factual or legal issues, at any stage of the proceeding that the case may not be  
25 fairly disposed of under this rule, it may order that the action be decided by the use of a  
26 non-summary proceeding.

27 (e) Hearing Procedures.

28 (1) Any hearing of the action must be informal. The court must conduct the hearings  
29 and may make its own inquiry during the hearings. The hearings must be of record and all  
30 testimony must be under oath or affirmation. A trial by jury is not permitted and attorneys  
31 may participate. Attorney's fees and costs may be assessed as provided by law. The rules of  
32 evidence do not apply to a summary proceeding.

33 (2) The court ~~shall~~ must hold the initial hearing with both parties present. No interim  
34 order may be issued except ~~upon~~ on notice and hearing, unless the court specifically finds  
35 exceptional circumstances as set forth in Rule 8.2, ~~NDROE~~. No ex parte interim order may  
36 be issued, unless the movant moving party executes an affidavit setting forth specific facts  
37 justifying the issuance of the order. A restraining and eviction order may not be issued ex  
38 parte, unless the movant also appears personally and good cause is shown for issuance of the  
39 order.

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

43 A hearing must be scheduled within 14 days of the issuance of the interim order. The  
44 party obtaining the ex parte interim order must secure a hearing date and serve the interim  
45 order and the order for appearance on the ~~adverse~~ opposing party.

46 The initial hearing, whether in response to an ex parte interim order or otherwise, must  
47 be conducted by the court to afford such temporary relief to the parties and the minor  
48 children as provided in Rule 8.2(b), ~~NDROE~~.

49 (3) The court ~~shall~~ must schedule a final hearing within 60 days after the initial  
50 hearing to decide the issues of law and fact. The hearing may be continued as necessary. The  
51 court may utilize any services for the protection of persons and property that are available  
52 in a non-summary proceeding, including appointment of a guardian ad litem, mediator, or  
53 referee. The costs of services may be assessed as provided by law against the parties in the  
54 proportion as the court determines just and equitable.

55 (4) There will be no formal discovery. At the initial hearing, or at any subsequent  
56 time, the court ~~shall~~ must specify information to be furnished in addition to the financial  
57 affidavit.

58 (5) Mediation, or other nonadversarial methods, should be used when appropriate as  
59 a means of resolving disputes.

60 (f) Judgment or Order. Based upon the evidence presented, the court ~~shall~~ must issue  
61 a written judgment or order indicating its decision in all cases begun under this rule. A  
62 judgment or order may be entered without the appearance of either party at the final hearing.  
63 The court may utilize all powers available to a district court which are not in conflict with

64 this rule. The court shall must make findings of fact and conclusions of law in writing or  
65 orally and recorded in open court.

66 (g) Appeal. An appeal to the ~~North Dakota~~ Supreme Court may be taken by a party  
67 as in any civil action.

68 (h) Option. The presiding judge of each judicial district may designate one or more  
69 judges or referees who will use the proceeding.

70 EXPLANATORY NOTE

71 Rule 8.5 was amended, effective August 1, 2009; \_\_\_\_\_.

72 Rule 8.5 was made permanent, effective February 12, 2003.

73 Rule 8.5 was initially adopted, effective October 1, 1996, as a pilot project in two  
74 judicial districts. Subdivision (h) was amended, effective August 1, 2001, to permit the  
75 presiding judge of each judicial district to designate one or more judges or referees to use the  
76 proceeding.

77 Paragraph (a)(2) was amended, effective \_\_\_\_\_, to increase the limit on  
78 combined net assets from \$20,000 to \$50,000.

79 Subdivision (b) was amended, effective \_\_\_\_\_, to increase the time to hold  
80 the initial hearing from 10 to 14 days after service of the order of appearance.

81 Subdivision (c) was amended, effective \_\_\_\_\_, to increase the time for the  
82 defendant to serve and file an answer and financial affidavit from 20 to 21 days after service  
83 of the order for appearance.

84 Subdivision (d) was amended, effective \_\_\_\_\_, to change the time for a

85 party to elect to use a non-summary proceeding from 15 to 21 days before the final hearing.

86 Sources: Joint Procedure Committee Minutes of \_\_\_\_\_; April 29-30,

87 2010, page 26; May 21-22, 2009, pages 44-45; January 30-31, 2003; April 26-27, 2001,

88 pages 6-8; September 28-29, 1995, pages 11-12.