

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**  
Supreme Court No. 20110129

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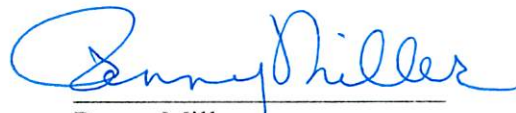
**Amendments to Rule 4(e) and the Explanatory Note,  
North Dakota Rules of Appellate Procedure**

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At the request of the Court, Mike Hagburg, Staff Attorney assigned to the Joint Procedure Committee, proposed amendments to Rule 4 of the North Dakota Rules of Appellate Procedure to address the inconsistency between Rules 2.2(a) and 4(e), North Dakota Rules of Appellate Procedure, with regard to the time for filing a Notice of Appeal. The Court considered the matter, and

**ORDERED**, that the proposed amendments, to Rule 4(e) and the Explanatory Note of the North Dakota Rules of Appellate Procedure are ADOPTED, effective immediately.

The Supreme Court of the State of North Dakota convened the 4<sup>th</sup> day of May 4, 2011, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner and 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 4. APPEAL – WHEN TAKEN

(a) Appeal in civil case.

(1) Time for filing notice of appeal. In a civil case, except as provided in paragraph (a)(4), the notice of appeal required by Rule 3 must be filed with the clerk of district court within 60 days from service of notice of entry of the judgment or order being appealed.

(2) Multiple appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this subdivision, whichever period ends later.

(3) Effect of motion on notice of appeal.

(A) If a party timely files with the clerk of district court any of the following motions under the North Dakota Rules of Civil Procedure, the full time to file an appeal runs for all parties from service of notice of the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is served and filed no later than 15 days

22 after notice of entry of judgment;

23 (B) (i) If a party files with the clerk of district court any motion listed in subparagraph  
24 (a)(3)(A) after a notice of appeal is filed, the party filing the motion must notify the supreme  
25 court clerk in writing, and the court may remand the case to the district court for disposition  
26 of the motion.

27 (ii) A party intending to challenge an order disposing of any motion listed in  
28 subparagraph (a)(3)(A), or a judgment altered or amended upon such a motion, must file a  
29 notice of appeal, or an amended notice of appeal, in compliance with Rule 3(c), within the  
30 time prescribed by this rule measured from the service of notice of the entry of the order  
31 disposing of the last such remaining motion.

32 (iii) No additional fee is required to file an amended notice.

33 (4) Motion for extension of time.

34 (A) The district court may extend the time to file a notice of appeal if:

35 (i) a party so moves no later than 30 days after the time prescribed by subdivision (a)  
36 expires; and

37 (ii) that party shows excusable neglect or good cause.

38 (B) If a motion for extension of time is filed, notice must be given to the other parties.

39 (C) No extension under paragraph (a)(4) may exceed 30 days after the prescribed time.

40 (b) Appeal in criminal case.

41 (1) Time for filing notice of appeal.

42 (A) In a criminal case, a defendant's notice of appeal must be filed with the clerk of

43 district court within 30 days after the entry of the judgment or order being appealed.

44 (B) If an appeal by the state is authorized by statute, the notice of appeal must be filed  
45 with the clerk of district court within 30 days after the entry of the judgment or order being  
46 appealed.

47 (2) Filing before entry of judgment. A notice of appeal filed after the district court  
48 announces a decision, sentence, or order, but before the entry of the judgment or order, is  
49 treated as filed on the date of and after the entry.

50 (3) Effect of motion on notice of appeal.

51 (A) If a defendant timely makes any of the following motions under the North Dakota  
52 Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be  
53 filed within 30 days after the entry of the order disposing of the last such remaining motion,  
54 or within 30 days after the entry of the judgment of conviction, whichever period ends later:

55 (i) for a new trial under Rule 33, but if based on newly discovered evidence, only if  
56 the motion is made no later than 30 days after the entry of the judgment;

57 (ii) for arrest of judgment under Rule 34.

58 (B) If the defendant files with the clerk of district court any motion listed in  
59 subparagraph (b)(3)(A) after a notice of appeal is filed, the defendant must notify the  
60 supreme court clerk in writing, and the court may remand the case to the district court for  
61 disposition of the motion.

62 (C) A notice of appeal filed after the district court announces a decision, sentence, or  
63 order, but before it disposes of any of the motions referred to in subparagraph (b)(3)(A),

64 becomes effective upon the later of the following:

65 (i) the entry of the order disposing of the last such remaining motion;

66 (ii) the entry of the judgment of conviction.

67 (D) A valid notice of appeal is effective, without amendment, to appeal from an order  
68 disposing of any of the motions referred to in subparagraph (b)(3)(A).

69 (4) Motion for extension of time. Upon a finding of excusable neglect or good cause,  
70 the district court may -- before or after the time has expired, with or without motion and  
71 notice -- extend the time to file a notice of appeal for a period not to exceed 30 days from the  
72 expiration of the time otherwise prescribed by this subdivision.

73 (5) Jurisdiction. The filing of a notice of appeal under this subdivision does not divest  
74 a district court of jurisdiction to correct a sentence under Rule 35(a), nor does the filing of  
75 a motion under Rule 35(a) affect the validity of a notice of appeal filed before entry of the  
76 order disposing of the motion. The filing of a motion under N.D.R.Crim.P. 35(a) does not  
77 suspend the time for filing a notice of appeal from a judgment of conviction.

78 (6) Entry defined. A judgment or order is entered for purposes of this subdivision  
79 when it is entered on the criminal docket.

80 (c) Appeal in Contempt Case. A notice of appeal must be filed with the clerk of  
81 district court within 60 days after entry of the judgment or order being appealed. Upon a  
82 finding of excusable neglect or for good cause, the district court may, before or after the time  
83 has expired, with or without motion and notice, extend the time for filing a notice of appeal  
84 for a period not to exceed 30 days from the expiration of the time otherwise prescribed by

85 this subdivision.

86 (d) Appeal in post-conviction proceeding. A notice of appeal must be filed with the  
87 clerk of district court within 60 days of service of notice of entry of the judgment or order  
88 being appealed. Upon a finding of excusable neglect or good cause, the district court may,  
89 before or after the time has expired, with or without motion and notice, extend the time for  
90 filing a notice of appeal for a period not to exceed 30 days from the expiration of the time  
91 otherwise prescribed by this subdivision.

92 (e) Appeal in Proceeding Under Uniform Juvenile Court Act. Except for an appeal in  
93 a termination of parental rights proceeding, a notice of appeal in a proceeding under the  
94 Uniform Juvenile Court Act must be filed with the clerk of district court within 30 days of  
95 service of notice of entry of the judgment, order or decree being appealed. Upon a finding  
96 of excusable neglect or good cause, the supreme court may, before or after the time has  
97 expired, with or without motion and notice, extend the time for filing a notice of appeal for  
98 a period not to exceed 30 days from the expiration of the time otherwise prescribed by this  
99 subdivision.

100 (f) Mistaken filing in supreme court. If a notice of appeal in either a civil or a criminal  
101 case is mistakenly filed in the supreme court, the supreme court clerk must note on the notice  
102 the date when it was received and send it to the clerk of district court. The notice is then  
103 considered filed in the district court on the date so noted.

104 EXPLANATORY NOTE

105 Rule 4 was amended, effective March 1, 1986; March 1, 1994; March 1, 1997; March

106 1, 1998; March 1, 1999; August 1, 2001; March 1, 2003; March 1, 2007; March 1, 2008;  
107 May 4, 2011.

108 The time for civil appeals runs from "service of notice of entry" of the order or  
109 judgment. However, service of notice of entry of judgment is not necessary to start the time  
110 running for filing a post-judgment motion or appeal if the record clearly evidences actual  
111 knowledge of entry of judgment by the affirmative action of the moving or appealing party.  
112 See N.D.R.Civ.P. 58(b).

113 The responsibility under subdivision (a) is shifted to counsel to serve the notice and  
114 commence the period for appeal. This differs from the federal rule, which provides the time  
115 for appeal is to run from "the date of entry."

116 The time limit for taking an appeal does not prevent the taking of an appeal at any  
117 time after the entry of the judgment or order and before service of notice of entry.

118 Subdivision (a) was amended, effective March 1, 1999, to provide the 30 day  
119 extension for excusable neglect is to be added to the time for appeal provided by the statute  
120 or rule setting the time for appeal. A party seeking an extension of time to appeal should file  
121 a notice of appeal with the motion for extension.

122 Subdivision (b) was amended, effective March 1, 2003, to increase the time for a  
123 criminal defendant to appeal from 10 days to 30 days.

124 Subdivision (b) was amended, effective March 1, 2008, to clarify that the time for  
125 appeal continues to run even if a motion to correct a sentence under N.D.R.Crim.P. 35 is  
126 filed.

127 Subdivision (d) was adopted, effective August 1, 2001, to provide a time for appeal  
128 in a post-conviction proceeding.

129 Subdivision (e) was adopted, effective March 1, 2007, to clarify the time for appeal  
130 in a proceeding under the Uniform Juvenile Court Act. Requests for extension of time in  
131 juvenile cases must be directed to the supreme court.

132 Subdivision (e) was amended, effective May 4, 2011, to specify that appeals in  
133 termination of parental rights proceedings are not governed by the appeal deadlines in this  
134 rule. Appeals in termination of parental rights proceedings are expedited under Rule 2.2.

135 Subdivision (f) was adopted, effective March 1, 2003, to provide a procedure to be  
136 used when a notice of appeal is mistakenly filed in the supreme court.

137 Rule 4 was amended, effective March 1, 2003, in response to the December 1, 1998,  
138 amendments to Fed.R.App.P. 4. The language and organization of the rule were changed to  
139 make the rule more easily understood and to make style and terminology consistent  
140 throughout the rules.

141 Sources: Joint Procedure Committee Minutes of January 25, 2007, page 16;  
142 September 22-23, 2005, pages 25-26; April 26-27, 2001, pages 4-5; September 28-29, 2000,  
143 pages 10-13; January 27-28, 2000, pages 4-9; September 23-24, 1999, pages 10-12; April 30-  
144 May 1, 1998, page 13; January 30, 1997, page 8; January 25-26, 1996, pages 7-10; April 29-  
145 30, 1993, pages 2-3, 16-18; November 29, 1984, pages 19-20; April 26, 1984, pages 23-24;  
146 January 20, 1984, pages 10-15; September 18-19, 1980, page 20; January 12-13, 1978, page  
147 25; Fed.R.App.P. 4.



148

Statutes Affected:

149

Considered: N.D.C.C. § 27-20-56.

150

Superseded: N.D.C.C. § 28-27-04.

151

Cross Reference: N.D.R.App.P. 2.2 (Termination of Parental Rights – Expedited Appeals)