



# STATE OF NORTH DAKOTA UNIFIED JUDICIAL SYSTEM

OFFICE OF COURT ADMINISTRATION  
Administrative Unit II

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
DECEMBER 2, 2013  
STATE OF NORTH DAKOTA

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November 29, 2013

Ms. Penny Miller  
Clerk of the Supreme Court  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0530

RE: Comments on Proposed Changes to N.D.R.Ct. 3.1

Dear Ms. Miller,

Please accept the following comments on proposed changes to Rules of Court 3.1 (h). At the present time clerks are directed to ensure proof of service is filed at the same time as pleadings and documents are filed with some exceptions. This has caused many problems because not all clerks are sure which pleadings or documents need to have a proof of service filed simultaneously. In Unit II we created an exception guide for the clerks which is attached; however this guide is not complete.

It is understandable that the bar has frustrations when clerks are rejecting some e-filed pleadings and documents incorrectly because there is no consistency across the state.

The proposed rule would allow lawyers to file the proof of service within a reasonable time. We believe there are a few issues with the proposed rule. "Reasonable time" will probably be viewed differently across the state. A real concern however is that clerks will need to enter time standard reviews in Odyssey to check to see if the proof of service was ever filed. In Unit II, there approximately 5,200 documents e-filed each week. As you can see, there could be thousands of reviews the clerks would need to enter and check in Odyssey each week. This could lead to a large increase of work in each clerk's office.

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One advantage of electronic records is that they allow the clerk to relate documents. Relating allows us to group a motion, proposed order, and service document together along with any replies to that motion. The order, once signed, is also related. We have attached an example displaying related documents. This is a huge advantage with electronic records that we did not have before with paper files. Related documents make it much easier for judges to navigate through files. If this rule is adopted as proposed it will become difficult for the clerk to match the service document with the document that it relates to. This would be especially true for large complicated civil cases.

We would propose paragraph (h) of the rule remain as currently written and the North Dakota State Bar Association create a guide the clerks use to determine whether proof of service is required for a particular pleading or document. This guide would be approved by State Court Administration and would bring consistency in enforcement of the rule across the state.

Respectfully submitted,



Rod Olson  
Court Administrator, Unit 2



Chris Iverson  
Assistant Court Administrator, Unit 2

pc: Sally Holewa, State Court Administrator

## UNIT 2 GUIDE

### FILE AND SERVE: DOCUMENTS THAT DO NOT REQUIRE A SERVICE DOCUMENT TO BE ACCEPTED

1. Rule 43 Documents
2. RESTORE Letters
3. Counseling Letters
4. Juvenile Orders Appointing GAL
5. Juvenile Orders from Detention Hearing
6. Stipulations
7. Proposed Judgments/Orders filed with stipulation that is signed by parties\*\*
8. Application for PD/Certificate of Eligibility
9. Conflict of Attorney
10. Satisfactions
11. Child Support COLA's
12. Subpoenas served on law enforcement by SA Office/law enforcement signed subpoena acknowledging they received it
13. Petition for Revocation/Order to Apprehend
14. Petition for Revocation/Proposed Order to Show Cause
15. Motion to Quash a Warrant (if filed by SA Office)
16. Motion to Dismiss (if filed by SA Office)
17. Treatment plans filed by Social Services
18. Motions for Default Judgments, whether included with initiating paperwork or filed subsequently
19. Motions to Extend Probation w/Proposed Order (defendant signs petition to extend)
20. Request and Proposed Order to Participate by Phone
21. Ex Parte Motions
22. Motion to Appear Pro Hac Vice

\*\*\*Renewal of Judgments must have a service document filed with them.

Revised 9-17-13

## Relating Examples

01/29/2013	<b>Complaint</b>	Complaint	2	
02/15/2013	<b>Answer</b>		20	
02/20/2013	<b>Service Document</b>	Certificate of Fax	22	
Party: Attorney Clark, Amy M.				
02/15/2013	<b>Affidavit</b>	In Response to Exparte Order	21	
02/08/2013	<b>Service Document</b>	Sheriff's Return	14	
Party: Defendant Kopperud, Courtney Marie				
01/29/2013	<b>Motion</b>	Motion for Ex Parte Order	4	
01/29/2013	<b>Order Disposing of Motion</b>	Ex Parte Interim Order	9	
01/29/2013	<b>Affidavit</b>	Affidavit of Jacob Joseph Moore in Support of Plaintiff's Motion for Ex Parte Interim Order	6	
01/29/2013	<b>Affidavit</b>	Financial Statement and Affidavit	5	
01/29/2013	<b>Summons</b>	Summons	1	

01/24/2013	<b>Complaint</b>	Complaint (Car Accident)	1	
02/08/2013	<b>Answer</b>	Answer and Jury Demand	5	
02/08/2013	<b>Service Document</b>	Affidavit of Service by Mail	6	
Party: Attorney Williams, Michael J				
01/24/2013	<b>Service Document</b>	Sheriff's Return	3	
Party: Defendant Vetter, Alois				
01/24/2013	<b>Summons</b>	Summons	2	

06/11/2013	<b>Motion</b>	Motion to Appear Pro Hac Vice	25	
06/11/2013	<b>Service Document</b>	Certificate of Service	28	
06/11/2013	<b>Proposed Order</b>	Proposed Order Granting Admission Pro Hac Vice	27	
06/12/2013	<b>Order</b>	granting admission pro hac vice	29	
06/11/2013	<b>Affidavit</b>	Affidavit of Timothy J. Carrigan	26	
03/13/2013	<b>Notice</b>	Notice of Appearance	23	
03/04/2013	<b>Response</b>	Defendant Lee Jones & Sons reply to cross-claim of Solien & Larson Engineering	20	
03/04/2013	<b>Service Document</b>		21	
03/04/2013	<b>Notice</b>	of appearance	16	
03/04/2013	<b>Service Document</b>		17	
Party: Attorney Lillehaug, Duane A				
03/01/2013	<b>Notice</b>	Notice of Entry of Order for Admission Pro Hac Vice	14	
03/01/2013	<b>Affidavit</b>	Affidavit of Service by Mail	15	
02/28/2013	<b>Motion</b>	Motion to Appear Pro Hac Vice	6	
02/28/2013	<b>Proposed Order</b>	Proposed Order for Admission Pro Hac Vice	12	
03/01/2013	<b>Order</b>	for admission pro hac vice	13	
02/28/2013	<b>Affidavit</b>	Affidavit of Service by Mail	11	
02/28/2013	<b>Affidavit</b>	Affidavit of Service by Mail	9	
02/28/2013	<b>Affidavit</b>	Affidavit of Paul A. Strandness	8	
02/28/2013	<b>Affidavit</b>	Affidavit of Stephen S. Eckman	7	

06/05/2013	<b>Civil Filing</b>	***** STATUTE OF LIMITATIONS *****	437	
07/29/2013	<b>Motion</b>	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OF DEFENDANT I.C.I. AND PAUL W. ABBOTT COMPANY ON	156:	
07/29/2013	<b>Service Document</b>	AFFIDAVIT OF SERVICE ON ALL COUNSEL (statute of limitation)	157:	
07/29/2013	<b>Affidavit</b>	AFFIDAVIT OF THOMAS R. THIBODEAU (statute of limitation)	157:	
07/29/2013	<b>Exhibit</b>	Exhibit C Complaint	157:	
07/29/2013	<b>Exhibit</b>	Exhibit B AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT	157:	
07/29/2013	<b>Exhibit</b>	Exhibit A Certificate of Deawth	157:	
07/29/2013	<b>Brief</b>	DEFENDANT I.C.I. AND PAUL W. ABBOTT COMPANY S MEMORNADUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	157:	
07/19/2013	<b>Motion</b>	Fisher - Notice of Motion for Summary Judgment and Motion for Summary Judgment (SOL - Wrongful Death)	156:	
07/19/2013	<b>Service Document</b>	Certificate of Service to David Thompson and all defense counsel - see Master Service List	156:	
07/19/2013	<b>Brief</b>	Fisher - Brief in Support of Motion for Summary Judgment (SOL - Wrongful Death)	156:	
07/19/2013	<b>Motion</b>	Chromalox - Notice of Motion for Summary Judgment and Motion for Summary Judgment (SOL - Wrongful Death)	154:	
07/19/2013	<b>Service Document</b>	Certificate of Service to David Thompson and all defense counsel - see Master Service List	154:	
07/19/2013	<b>Brief</b>	Chromalox - Brief in Support of Motion for Summary Judgment (SOL - Wrongful Death)	154:	
07/16/2013	<b>Motion</b>	Defendants Foseco, Inc., American Biltrite, Inc., Johnston Boiler Company and Motion for Summary Judgment on Statute of Lim	149:	
07/16/2013	<b>Service of Motion</b>	Affidavit of Service -- See Master List	149:	
07/16/2013	<b>Proposed Order</b>	Proposed Order Granting Foseco, Inc., American Biltrite, Inc., Johnston Boiler Company and Industrial Holdings C	149:	
07/16/2013	<b>Affidavit</b>	Affidavit of Nicholas J. O'Connell in Support of Defendants Foseco, Inc., American Biltrite, Inc., Johnston Boiler Company	149:	
07/16/2013	<b>Exhibit</b>	Exhibit C to Affidavit of Nicholas J. O'Connell the Order dated December 30, 2011	149:	
07/16/2013	<b>Exhibit</b>	Exhibit B to Affidavit of Nicholas J. O'Connell -- Summons and Complaint	149:	
07/16/2013	<b>Exhibit</b>	Exhibit A to Affidavit of Nicholas J. O'Connell the Death Certificate	149:	
07/16/2013	<b>Notice</b>	of Motion -Defendants Foseco, Inc., American Biltrite, Inc., Johnston Boiler Company and Industrial Holdings Corporation f/k	149:	
07/16/2013	<b>Motion</b>	Defendants Motion for Partial Summary Judgment Dismissing Wrongful Death Claim Based on Statute of Limitation	147:	
07/16/2013	<b>Service of Motion</b>	COS - David Thompson	147:	
07/16/2013	<b>Brief</b>	Defendants Brief in Support of Motion for Partial Summary Judgment Dismissing Wrongful Death Claim Based on Statute of Lim	147:	