

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

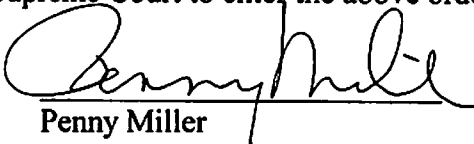
Supreme Court No. 20130314

Proposed Amendments to North Dakota Rules of Court 3.1 and 8.4

[¶ 1] On October 8, 2013, the Joint Procedure Committee forwarded proposed amendments to North Dakota Rules of Court 3.1 and North Dakota Rules of Court 8.4. The proposal is available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶ 2] ORDERED, that the amendments to North Dakota Rules of Court 3.1, with further amendments by the Court, and the amendments to North Dakota Rules of Court 8.4 are ADOPTED, effective March 1, 2014.

[¶ 3] The Supreme Court of the State of North Dakota convened this 10th day of December, 2013, with the Honorable Gerald W. VandeWalle, Chief Justice, 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 3.1. PLEADINGS

(a) Legibility and Numbering. All pleadings and other documents must be typewritten, printed, or reproduced and easily readable. Each sheet must be separately numbered. Pleadings and other documents filed with the court, except as otherwise permitted by the court, must be prepared on 8 1/2 x 11 inch white paper.

(b) Signature. All pleadings and other documents of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name and contain the attorney's address, telephone number, e-mail address for electronic service, and State Board of Law Examiners identification number. All pleadings and other documents of a party who is not represented by an attorney must be signed by the party and contain the party's address and telephone number.

(c) Spacing and Names. Writing must appear on one side of the sheet only and must be double-spaced, except for quoted material. Names must be typed or printed beneath all signatures.

(d) Binding. All pleadings or other documents in an action or proceeding must be filed by the clerk flat and unfolded and each set of papers firmly fastened together.

(e) Filing of Documents. A party seeking to file a pleading or other document must submit it to the clerk. The first submitted version of a pleading or document will be treated as the original unless otherwise ordered by the court. A party need only file ~~the original demand for change of judge~~ a single copy of any pleading or document.

(f) Lost Papers. If any original document is lost or withheld by any person, the court

23 may authorize a copy to be filed.

24 (g) File Numbers. The clerk, at the time of the filing of a case and at the time of the
25 filing of any responsive pleading, must assign a file number to the case and immediately
26 notify the attorney of record of the assigned file number. Thereafter, all documents and
27 pleadings to be filed must bear the assigned file number on the front or title page in the upper
28 right hand portion of the document to be filed.

29 (h) Proof of Service Required. ~~Proof of service must accompany pleadings and~~
30 ~~documents submitted to the clerk for filing, unless a rule or statute requires a document to~~
31 ~~be filed before it is served.~~ After the complaint is filed, all documents required to be served
32 on a party, together with a separate certificate of service document, must be filed with the
33 court within a reasonable time after service. If a certificate of service is filed on a date later
34 than the document to which it refers was filed, the certificate of service must identify the
35 docket item number and the filing date of the previously filed document. Civil discovery
36 documents may only be filed as allowed by N.D.R.Civ.P. 5(d)(3).

37 (i) Privacy Protection. Parties must follow privacy protection instructions in N.D.R.Ct.
38 3.4 when making filings with the court. Court personnel have no duty to review documents
39 for compliance with N.D.R.Ct. 3.4.

40 (j) Non-Conforming Documents.

41 (1) Documents and pleadings that do not conform to this rule may not be filed.

42 (2) If a non-conforming document is filed by mistake, the court on motion or on its
43 own may order the pleading or other document reformed. If the order is not obeyed, the court
44 may order the document stricken and its service to be of no effect.

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EXPLANATORY NOTE

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Rule 3.1 was amended, effective January 1, 1988; March 1, 1996; March 1, 1999; August 1, 2001; March 1, 2005; March 1, 2007; March 1, 2009; May 1, 2012; March 1, 2013; April 15, 2013; March 1, 2013.

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Rule 3.1 was reorganized, effective May 1, 2012, to make it clear that all documents presented for filing must conform to all applicable requirements of the rule.

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A new subdivision (b) was added, effective March 1, 1996, which contains signature requirements. The letter designation of each existing subdivision was amended accordingly.

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Subdivision (b) was amended, effective April 15, 2013, to require the e-mail address for electronic service under Rule 3.5 to be provided in filed documents.

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A new subdivision (e) was added, effective March 1, 2005, to clarify that documents must be filed with the clerk. Submitting a document to a judge or to court personnel other than the clerk does not constitute filing. The first version of a given document submitted to the clerk, regardless of what form it is in, will be filed and treated as the original. A party seeking to correct the original or have another document treated as the original must obtain an order from the court.

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Subdivision (e) was amended, effective ~~May 1, 2012, to specify that a party making a demand for change of judge may file only one original~~ March 1, 2013, to clarify that only a single copy of any pleading or document need be filed with the court. This provision supersedes the requirement in N.D.C.C. § 29-15-21 that a demand for change of judge be

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66 filed in triplicate and the requirements in N.D.C.C. §§ 14-12.2-36 and 14-14.1-25 for the
67 filing of two copies of an order. This provision should be interpreted as superseding any
68 statutory requirement that multiple copies of a document be filed with the court.

69 Subdivision (h) was amended, effective March 1, 2013, to clarify that, unless a rule
70 or statute requires a document to be filed before it is served, proof of service must
71 accompany any document submitted for filing.

72 Subdivision (h) was amended, effective March 1, 2014, to require, once the complaint
73 has been filed, filing of all documents that must be served, along with a certificate of service
74 document, within a reasonable time after service. This provision is modeled after Minn. R.
75 Civ. P. 5.04. When multiple documents are filed simultaneously, a single document may be
76 submitted to certify service of the multiple documents. While served civil discovery
77 documents may not generally be filed, some criminal and juvenile discovery documents, such
78 as requests for discovery from the state, are required to be filed.

79 Subdivision (i) was amended, effective March 1, 2007, to specify that court personnel
80 have no duty to review documents for compliance with privacy protection rules.

81 Subdivision (i) was amended, effective March 1, 2009, to reflect the transfer of
82 document privacy protection requirements to N.D.R.Ct. 3.4.

83 Sources: Joint Procedure Committee Minutes of September 26, 2013, pages _____; April
84 25-26, 2013, pages 13-15; September 27, 2012, page 14; January 26-27, pages 16-17;
85 January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27, 2007, page
86 31; September 22-23, 2005, pages 16-17; September 23-24, 2004, pages 3-5; April 29-30,
87 2004, pages 6-13, 17-25; January 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-

88 11; April 24-25, 2003, pages 6-12; January 29-30, 1998, page 22; September 29-30, 1994,
89 pages 6-7.

90 Statutes Affected:

91 Superseded: N.D.C.C. §§ 14-12.2-36 (in part), 14-14.1-25 (in part), and 29-15-21 (in
92 part).

93 Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers);
94 N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers; Representations to Court;
95 Sanctions); N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court); N.D.R.Ct.
96 3.5 (Electronic Filing in the District Courts); N.D.R.Ct. Appendix G, Form A (Certificate of
97 Electronic Service); N.D.Sup.Ct.Admin.R. 41 (Access to Judicial Records).

RULE 8.4. SUMMONS IN ACTION FOR DIVORCE, SEPARATION OR TO
DETERMINE PARENTAL RIGHTS AND RESPONSIBILITIES

(a) Restraining provisions - Divorce or Separation. A summons in a divorce or separation action must be issued by the clerk under the seal of the court, or by an attorney for a party to the action, and include the following restraining provisions:

(1) Neither spouse may dispose of, sell, encumber, or otherwise dissipate any of the parties' assets, except:

(A) For necessities of life or for the necessary generation of income or preservation of assets; or

(B) For retaining counsel to carry on or to contest the proceeding. If a spouse disposes of, sells, encumbers, or otherwise dissipates assets during the interim period, that spouse shall provide to the other spouse an accounting within 30 days.

(2) Neither spouse may harass the other spouse.

(3) All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.

(4) Except for temporary periods, neither spouse may remove any of their minor children from North Dakota without the written consent of the other spouse or order of the court.

(5) Each summons must include the following statement in bold print: If either spouse violates any of these provisions, that spouse may be in contempt of court.

(b) Restraining Provisions - Action to Determine Parental Rights and Responsibilities.

23 A summons in an action to determine parental rights and responsibilities must be issued by
24 the clerk under seal of the court, or by an attorney for a party to the action, and include the
25 following restraining provisions:

26 (1) Except for temporary periods, neither party may remove any of their minor
27 children from North Dakota without the written consent of the other party or order of the
28 court.

29 (2) Each summons must include the following statement in bold print: If a party
30 violates any of these provisions, that party may be in contempt of court.

31 (c) Applicability of restraining provisions. The restraining provisions contained in the
32 summons apply to both parties upon service of the summons. The provisions are effective
33 until otherwise provided by court order or by written stipulation of the parties filed with the
34 court.

35 (d) Service by Publication. If a summons is served by publication under N.D.R.Civ.P.
36 4(e), the Rule 8.4 restraining provisions may be omitted from the published summons. A
37 complete summons, including the Rule 8.4 restraining provisions, must be filed with the
38 complaint and affidavit for service by publication in the manner set out in N.D.R.Civ.P.
39 4(e)(2) and mailed under N.D.R.Civ.P. 4(e)(4).

40 EXPLANATORY NOTE

41 Rule 8.4 was amended, effective March 1, 2007; August 1, 2009; March 1, 2014.

42 Rule 8.4 was adopted, effective March 1, 1996.

43 Subdivision (c) was added, effective March 1, 2007, to require restraining provisions
44 to be included in a summons in an action to determine parental rights and responsibilities

45 matter.

46 Subdivision (d) was added, effective March 1, 2014, to allow omission of this rule's
47 restraining provisions from the published version of a summons served under N.D.R.Civ.P.
48 4(e).

49 Sources: Joint Procedure Committee Minutes of September 26, 2013, pages _____; May
50 21-22, 2009, pages 44-45; April 27-28, 2006, pages 9-10; January 26, 2006, page 13; April
51 27-28, 1995, pages 17-21.

52 Cross Reference: N.D.R.Ct. Appendix A (Summons in Action for Divorce or
53 Separation); N.D.R.Civ.P. 4 (Commencement of Action – Service of Process, Pleadings,
54 Motions and Orders).