IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20150239

Proposed Amendments to the North Dakota Rules of Civil Procedure, North Dakota Rules of Criminal Procedure, North Dakota Rules of Evidence, North Dakota Rules of Court, and North Dakota Supreme Court Administrative Rules

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[¶ 1] The Joint Procedure Committee submitted a petition to approve proposed amendments to North Dakota Rules of Civil Procedure 5, 6, and 33; North Dakota Rules of Criminal Procedure 5, 10, 11, 12, 15, 20, 21, and 34; North Dakota Rules of Evidence 513, 801, and 803; North Dakota Rules of Court 2.2, 3.2, 3.5, 5.4, and 8.10; and North Dakota Supreme Court Administrative Rule 41. The Committee forwarded additional amendments to N.D.R.Crim.P. 3, 5 and 5.1. A synopsis and the proposed Amendments are available at http://www.ndcourts.gov/Court/Notices/Notices.htm. A comment period was provided and a hearing was held October 8, 2015. The Court considered the matter.

[¶ 2] **ORDERED**, that proposed amendments to North Dakota Rules of Civil Procedure 5, 6, and 33; North Dakota Rules of Criminal Procedure 3, 5, 5.1, 7, 10, 11, 12, 15, 20, 21, and 34; North Dakota Rules of Evidence 801 and 803; North Dakota Rules of Court 2.2, 3.2, 3.5 and 5.4; and North Dakota Supreme Court Administrative Rules 41, as further amended by the Court are ADOPTED, effective March 1, 2016.

[¶ 3] The Supreme Court of the State of North Dakota, convened on December 14, 2015, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices, and directed the Clerk of the Supreme Court to enter the above order.

Penny Miller
Clerk
North Dakota Supreme Court

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

(a) Service-When Required.

(1) In General. Other than service of a summons and complaint under Rule 4, each of the following documents must be served under this rule on every party, unless the rules provide otherwise:

(A) an order, unless the court orders otherwise;

(B) a pleading served after the original summons and complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery document required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document; and

(F) every document filed with the clerk or submitted to the judge.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an answer, claim, or appearance must be made on the person who had custody or

possession of the property when it was seized.

(4) Reopening Proceedings. In any proceeding to modify an order for spousal support or child support or an order on parental rights and responsibilities, service may be made on each party under Rule 5(b), unless the court orders service on a party under Rule 4.

(b) Service—How made.

(1) Service in general. A document that is required to be filed must be served electronically under the procedure specified in N.D.R.Ct. 3.5. Electronic service on an attorney must be made to the designated e-mail service address posted on the N.D. Supreme Court website. Electronic service is complete on transmission. Except as provided in N.D.R.Ct. 3.5(e)(4), electronic service is not effective if the serving party learns through any means that the document did not reach the person to be served.

(2) Persons Served.

(A) Service on a Party Represented by an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party. If an attorney is providing limited representation under Rule 11(e), service must be made on the party and on the attorney for matters within the scope of the limited representation.

(B) Persons Exempt from Electronic Service. Persons who are exempt from electronic service and filing under N.D.R.Ct. 3.5 must serve documents under Rule

5(b)(3).

(3) Other Service. A document that is not required to be filed, or that will be served on a person exempt from electronic service, is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, leaving it in a conspicuous place in the office; or,

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to the person's last known address, in which event service is complete upon deposit of the document to be served with the commercial carrier;

(E) if no address is known, on order of the court by leaving it with the clerk of court;

(F) sending it by electronic means if the person consented in writing, in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means that the person consented to in writing.

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) In General. Unless a statute, court rule, or court order provides otherwise, all documents in an action must be filed with the clerk electronically, through the Odyssey® system.

(2) Initiating Pleading.

(A) The Summons and Complaint.

(i) The summons and complaint, or other initiating pleading, must be filed before a subpoena may be issued. Unless otherwise authorized by rule or statute, a party seeking to file an initiating pleading must provide proof that the pleading

was served under Rule 4. The proof of service must be filed with the initiating pleading.

(ii) A party who files a complaint or other initiating pleading must serve notice of filing on the other parties.

(iii) The defendant may demand that the plaintiff file the complaint.

- Service of the demand must be made under Rule 5(b) on the plaintiff's attorney or under Rule 4(d) on the plaintiff if the plaintiff is not represented by an attorney.

- In cases with multiple defendants, service of a demand by one defendant is effective for all the defendants.

- If the plaintiff does not file the complaint within 20 days after service of the demand, service of the summons is void.

- The demand must contain notice that if the complaint is not filed within 20 days, service of the summons will be void, unless, after motion made within 60 days after service of the demand for filing, the court finds excusable neglect.

(iv) The defendant may file the summons and complaint, and the costs incurred on behalf of the plaintiff may be taxed as provided in Rule 54(e).

(B) The Answer. Within a reasonable time after service of the notice of filing the complaint or initiating pleading, the defendant or respondent must file the answer and notify the plaintiff of the filing.

(3) Discovery Materials. A party must not file discovery materials with the

clerk unless:

(A) the materials are being submitted to the court for disposition of a pending motion;

(B) the court orders them to be filed; or

(C) a party certifies that the filing is necessary for safekeeping of the documents or exhibits pending case completion, in which event the party must state the reasons safekeeping is necessary.

(4) Return of Discovery Materials.

(A) The clerk shall return the following documents to the filing party upon final disposition of an appeal or, if no appeal is filed, upon expiration of the time for appeal:

(i) depositions;

(ii) interrogatories;

(iii) requests for admission;

(iv) requests for interrogatories;

(v) requests for production of documents; and

(vi) answers and responses to the above documents.

(B) If the filing party does not claim a filed document within 60 days after notification to do so, the clerk may dispose of the document as directed by court order.

(C) The clerk must take a receipt for all documents returned.

(5) Documents to be Used on Hearing. Unless otherwise directed by the court, all affidavits, notices and other documents designed to be used on the hearing of a motion or order to show cause must be filed at least 24 hours before the hearing.

(6) Failure to Comply. If a party fails to comply with this subdivision, the court, on motion of any party or its own motion, may order the documents to be filed. If the order is not obeyed, the court may order them to be regarded as stricken and their service to be ineffective.

(7) Rejection. Except as otherwise provided under Rules 13, 14, or 15, the clerk must reject for filing any document that adds a party to an action or proceeding without a court order. The clerk must endorse on the document a notation that it is rejected for filing under this rule and return the document to the person who tendered it for filing.

(e) Removal of Pleadings for Service. Upon a filing party's request, an original pleading or document in any civil action, which by law is required to be filed in the clerk of court's office where the action is pending, may be removed from the files for the purpose of serving it either inside or outside the state but must be returned without delay.

(f) Proof of Service. Proof of service under this rule is made as provided in Rule 4 or by an attorney's or court personnel's certificate showing that service was made under subdivision (b).

EXPLANATORY NOTE

Rule 5 was amended effective 1971, July 1, 1981; March 1, 1986; January 1, 1988; March 1, 1990; March 1, 1992, on an emergency basis; March 1, 1994; January 1, 1995; March 1, 1998; March 1, 1999; March 1, 2003; March 1, 2008; March 1, 2009; March 1, 2011; March 1, 2013; April 1, 2013; March 1, 2014; March 1, 2016.

Rule 5 applies to service of documents other than "process." In contrast, Rule 4 governs civil jurisdiction and service of process. When a statute or rule requiring service does not pertain to service of process, nor require personal service under Rule 4, nor specify how service is to be made, service may be made as provided in Rule 5(b). An example of a rule that requires a particular type of service is N.D.R.Ct. 11.2, which specifies that attorneys seeking to withdraw from representation must give notice to their client "by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery."

Subdivision (a) was amended, effective March 1, 2008, to improve organization and to make the subdivision easier to understand.

Paragraph (a)(4) was added, effective March 1, 2016, to specify service methods in proceedings to modify spousal support, child support or parental rights and responsibilities orders.

Paragraph (b)(1) was amended, effective March 1, 2009, to make it clear

that, when an attorney has served a notice of limited representation under Rule 11(e), service of documents on the attorney is not required except for documents within the scope of the limited representation. Rule 5, Rule 11 and N.D.R.Ct. 11.2, were amended to permit attorneys to assist otherwise self-represented parties on a limited basis without undertaking full representation of the party.

Paragraph (b)(1) was amended, effective March 1, 2014, to require any electronic service on an attorney to be made to the attorney's designated e-mail address as posted on the North Dakota Supreme Court website.

Paragraph (b)(2) was amended, effective April 1, 2013, to specify that electronic service through the Odyssey® system under the procedure specified in N.D.R.Ct. 3.5 is required for most documents that will be filed with the court.

Paragraph (b)(3) was amended, effective March 1, 2009, to provide for service by electronic means and to improve organization. Parties seeking to serve documents by electronic means must consult N.D.R.Ct. 3.5 for electronic service instructions.

Paragraph (b)(3) was amended, effective April 1, 2013, to specify that the other means of service listed in the paragraph apply only when the document served is not required to be filed or when it will be served on a person exempt from electronic service.

Subdivision (b) was amended, effective March 1, 1999, to permit service via a third-party commercial carrier as an alternative to the Postal Service. The

requirement for a "third-party commercial carrier" means the carrier may not be a party to nor interested in the action, and it must be the regular business of the carrier to make deliveries for profit. A law firm may not act as or provide its own commercial carrier service with service complete upon deposit. In addition, the phrase "commercial carrier" does not include electronic delivery services.

Paragraph (d)(1) was amended, March 1, 2008, to delete a reference to the note of issue and certificate of readiness.

Paragraph (d)(1) was amended, effective April 1, 2013, to specify that filing must be accomplished electronically through the Odyssey® system unless a statute, rule or order provides otherwise.

Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to require that proof of service be provided and filed by a party seeking to file an initiating pleading. Under Rule 3, an action is commenced on service of the initiating pleading, not on filing. Unless a rule specifically provides otherwise, service under Rule 4 must be accomplished before any pleadings in an action may be filed.

Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to include language allowing the defendant to demand filing of the complaint or to file the complaint itself. This language was transferred from Rule 4.

Subparagraph (d)(2)(A) was amended, effective April 1, 2013, to clarify that any party who files a complaint or other initiating pleading must serve notice on the other parties in the matter. Service of the summons must be made under

Rule 4.

Subdivision (f) was amended, effective March 1, 2003, to permit proof of service to be made by court personnel as well as by an attorney. Proof of service may also be made in the same manner as provided by Rule 4(i).

Rule 5 was amended, effective March 1, 2011, in response to the December 1, 2007, revision of the Federal Rules of Civil Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Rule 5 was amended, effective April 1, 2013, to replace the term "paper" with "document" throughout the rule.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, pages 10-13; September 26, 2013, pages 28-29; April 25-26, 2013, pages 15-16; January 31-February 1, 2013, pages 2-5, 15-18; January 26-27, 2012, pages 13-16; September 24-25, 2009, pages 12-13; April 24-25, 2008, pages 18-21; January 24, 2008, pages 2-7; October 11-12, 2007, pages 20-27; April 26-27, 2007, pages 19-22; September 27-28, 2001, pages 11-12; April 30-May 1, 1998, page 3; January 29-30, 1998, page 18; September 26-27, 1996, pages 16-17, 20; September 23-24, 1993, pages 19-20; April 29-30, 1993, pages 20-21; November 7-8, 1991, page 3; October 25-26, 1990, pages 10-12; April 20, 1989, page 2; December 3, 1987, page 11; May 21-22, 1987, pages 17-18; February 19-20, 1987, page 4; September 18-19, 1986, page 8; November 30, 1984, pages 26-27; October 18, 1984, pages 8-

11; November 29-30, 1979, page 2; September 20-21, 1979, pages 4-5; Fed.R.Civ.P. 5.

CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction-Process-Service), N.D.R.Civ.P. 45 (Subpoena), N.D.R.Civ.P. 77 (District Courts and Clerks),N.D.R.Crim.P. 49 (Service and Filing of Papers), N.D.R.Ct. 3.1 (Pleadings), N.D.R.Ct. 3.5 (Electronic Filing in the District Courts); N.D.R.Ct. 6.4 (Exhibits), N.D.R.Ct. 7.1 (Judgments, Orders and Decrees); N.D.R.Ct. 11.2 (Withdrawal of Attorneys).

RULE 6. COMPUTING AND EXTENDING TIME; TIME FOR MOTION PAPERS

(a) Computing Time. The following rules apply in computing any time period specified in these rules, or in any local rule, court order, or statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time;

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act

because of excusable neglect.

(2) Exceptions. A court cannot extend the time to act under Rules 4(e) (7), 50(b) and (d), 52(b), 59(i) and (j), and 60(b).

(c) [Rescinded]

(d) Motions and Notices of Hearing.

(1) In General. ~~A~~ If an evidentiary hearing is requested, the written motion and notice of the motion must be served at least 21 days before the ~~motion may be heard~~ time specified for the hearing, with the following exceptions:

(A) when the motion be heard ex parte;

(B) when these rules set a different period; or

(C) when a court order -- which a party may, for good cause, apply for ex parte -- sets a different period.

(e) Service Made Electronically, by Mail or Third-Party Commercial Carrier.

(1) Whenever a party must or may act within a prescribed period after service and service is made electronically, by mail or third-party commercial carrier under Rule 5, three days are added after the prescribed period would otherwise expire under N.D.R.Civ.P. 6(a).

(2) If service is made by mail or third-party commercial carrier under Rule 4, the prescribed period begins running upon delivery.

(3) For purposes of computation of time, any document electronically

served must be treated as if it were mailed on the date of transmission.

EXPLANATORY NOTE

Rule 6 was amended, effective 1971; March 1, 1990; on an emergency basis, March 1, 1992; January 1, 1995; March 1, 1997; March 1, 1999; March 1, 2001; March 1, 2004; March 1, 2007; March 1, 2009; March 1, 2011; March 1, 2014; March 1, 2016.

Legal holidays in North Dakota are listed in N.D.C.C. ch. 1-03.

Rule 6 was amended, effective March 1, 2011, in response to the December 1, 2007, revision of the Federal Rules of Civil Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (a) was amended, effective March 1, 2011, to simplify and clarify the provisions that describe how deadlines are computed. Under the previous rule, intermediate weekends and holidays were omitted when computing short periods but included when computing longer periods. Under the amended rule, intermediate weekends and holidays are counted regardless of the length of the specified period.

Paragraph (b)(2) was amended, effective March 1, 2011, to clarify that there can be no extension of the times set by provisions in Rules 4(e)(7), 52(b), 59(i) and (j), and 60(b).

Paragraph (b)(2) was amended, effective March 1, 2014, to add a reference

to Rule 50(b) and (d) and to delete a reference to Rule 50(c).

Subdivision (d) was amended, effective March 1, 1997, because Rule 3.2, N.D.R.Ct., governs when papers supporting or opposing a motion must be served. The March 1, 2001 amendment ~~changes~~ changed from 14 to 18 days when a motion must be served before it may be heard.

Paragraph (d)(1) was amended, effective March 1, 2011, to change from 18 to 21 days when a motion must be served before ~~it may be heard~~ the time specified for the hearing.

Paragraph (d)(1) was amended, effective March 1, 2016, to clarify that, if an evidentiary hearing is requested, the written motion and notice of motion must be served 21 days before the time specified for the hearing.

Subdivision (e) was amended, effective March 1, 1999, to make the three-day extension for service by mail applicable when service is via third-party commercial carrier. The proof of service must contain the date of mailing or deposit with the third-party commercial carrier.

Subdivision (e) was amended, effective March 1, 2004, to restrict applicability of the three-day extension for service by mail or third-party commercial carrier to items served under Rule 5. The time of service for an item served by mail or third-party commercial carrier under Rule 4 is the time the item is delivered to or refused by the recipient.

Subdivision (e) was amended, effective March 1, 2007, to clarify how to

count the three-day extension for service by mail or third-party commercial carrier. Under the amendment, a party that is required or permitted to act within a prescribed period should first calculate that period, without reference to the 3-day extension, but applying the other time computation provisions of these rules. After the party has identified the date on which the prescribed period would expire but for the operation of subdivision (e), the party should add 3 calendar days. The party must act by the third day of the extension, unless that day is a Saturday, Sunday, or legal holiday, in which case the party must act by the next day that is not a Saturday, Sunday, or legal holiday.

Subdivision (e) was amended, effective March 1, 2009, to provide that a document served by electronic means is treated as if it were mailed on the date of transmission. Service by electronic means includes service by facsimile transmission.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, page 6; January 29-30, 2015, pages 17-19; September 26, 2013, page 11; April 25-26, 2013, pages 26-27; April 29-30, 2010, pages 4-5; April 24-25, 2008, January 24, 2008, page 15; page 21; April 27-28, 2006, pages 6-7; January 26, 2006, page 11; January 30-31, 2003, pages 4-6; September 26-27, 2002, pages 15-18; January 27-28, 2000, pages 16-17; September 23-24, 1999, pages 20-21; January 29-30, 1998, page 18; April 25, 1996, pages 8-11; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 14-16 and 20;

April 29-30, 1993, page 20; November 7-8, 1991, page 3; October 25-26, 1990, page 12; April 20, 1989, page 2; December 3, 1987, page 11; June 22, 1984, pages 30-31; September 20-21, 1979, pages 5-6; Fed.R.Civ.P. 6.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 1-03.

CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction Process Service), N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P. 52 (Findings by the Court), N.D.R.Civ.P. 59 (New Trials Amendment of Judgments), N.D.R.Civ.P. 60 (Relief From Judgment or Order); N.D.R.Crim.P. 45 (Time); N.D.R.Ct. 3.2 (Motions).

RULE 33. INTERROGATORIES TO PARTIES

(a) In general.

(1) Timing. A party may serve written interrogatories on the plaintiff after commencement of the action and on any other party after service of the summons and complaint on that party.

(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) Number. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 50 written interrogatories~~, including all discrete subparts~~. Interrogatory subparts are not counted as separate interrogatories if they are logically or factually subsumed within and necessarily related to the primary question. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1)(B).

(b) Answers and objections.

(1) Responding party. The interrogatories must be answered:

(A) by the party to whom they are directed;

(B) if that party is a public or private corporation, a partnership, an

association, a governmental agency, or any other organization, by any officer or agent, who must furnish the information available to the party.

(2) Time to respond. The responding party must serve its answer and any objections within 30 days after being served with the interrogatories, but a defendant is not required to serve its answer and any objections until 45 days after service of the summons and complaint on it. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court. Any stipulated extension of time applies to interrogatory answers and objections.

(3) Answering each interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. A party must restate the interrogatory being answered immediately preceding its answer to the interrogatory.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(6) Repetitive question. A party is not required to answer an interrogatory that is repetitive of any interrogatory it has already answered. An interrogatory served by one party is considered to be served by all parties.

(c) Use. An answer to an interrogatory may be used to the extent allowed by

the Rules of Evidence.

(d) Option to produce business records. If the answer to an interrogatory may be determined by examining, auditing, compiling abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

EXPLANATORY NOTE

Rule 33 was amended, effective January 1, 1981; September 1, 1983; March 1, 1992 on an emergency basis; July 14, 1993; March 1, 1997; March 1, 2004; March 1, 2008; March 1, 2011; March 1, 2013; March 1, 2016.

Rule 33 was amended, effective March 1, 2011, in response to the December 1, 2007, revision of the Federal Rules of Civil Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Paragraph (a)(3) was added, effective March 1, 2013, to limit the number of interrogatories a party may serve. Each party is allowed to serve 50 interrogatories

on any other party, but must obtain leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this limitation by joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.

Paragraph (a)(3) was amended, effective March 1, 2016, to define the instances in which a subpart of an interrogatory does not constitute a separate interrogatory.

Paragraph (b)(2) was amended, effective March 1, 2004, to clarify that any stipulated extension applies to answers and objections.

Subdivision (d) was amended, effective March 1, 2008, in response to the 2006 federal revision. The amendments clarify that electronically stored information is a type of business record.

Sources: Joint Procedure Committee Minutes of January 29-30, 2015, pages 15-16; January 26-27, 2012, page 20-22; January 29-30, 2009, page 28; September 28-29, 2006, page 20-22; January 30-31, 2003, pages 13-15; September 28-29, 1995, page 14; November 7-8, 1991, page 5; October 25-26, 1990, pages 17-18; February 17-18, 1983, pages 12-14; October 30-31, 1980, pages 19-20; November 29-30, 1979, page 7; Fed.R.Civ.P. 33.

Cross Reference: N.D.R.Civ.P. 26 (General Provisions Governing Discovery), N.D.R.Civ.P. 29 (Stipulations Regarding Discovery Procedure), N.D.R.Civ.P. 34 (Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes), and N.D.R.Civ.P. 37 (Failure to Make Discovery - Sanctions); N.D.R.Ev. 510 (Waiver of Privilege by Voluntary Disclosure).

RULE 3. THE COMPLAINT

(a) General. The complaint is a written statement of the essential facts constituting the elements of the offense charged. The complaint must be sworn to and subscribed before an officer authorized by law to administer oaths within this state and be presented to a magistrate. The complaint may be presented as provided in Rule 4.1.

(b) Magistrate Review. The magistrate may examine on oath the complainant and other witnesses and receive any affidavit filed with the complaint. If the magistrate examines the complainant or other witnesses on oath, the magistrate shall cause their statements to be reduced to writing and subscribed by the persons making them or to be recorded.

(c) Amendment. The magistrate may permit a complaint to be amended at any time before a finding or verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. If the prosecuting attorney chooses not to pursue a charge contained in the initial complaint, a dismissal of that charge must be stated on the amended complaint.

EXPLANATORY NOTE

Rule 3 was amended, effective January 1, 1995; March 1, 1996; March 1, 2006; March 1, 2007; August 1, 2011; March 1, 2013; March 1, 2016.

Subdivision (a) was amended, effective January 1, 1995, to allow a

complaint to be subscribed and sworn to outside the presence of a magistrate. An effect of this amendment is to allow facsimile transmission of the complaint. For a listing of officers authorized to administer oaths, see N.D.C.C. § 44-05-01. The amendment does not preclude a magistrate from examining a complainant or other witnesses under oath when making the probable cause determination.

Subdivision (a) was amended, effective March 1, 1996, to clarify that the complaint is the initial document for charging a person with a misdemeanor or felony.

Subdivision (a) was amended, effective March 1, 2007, to specify that the complaint must contain a statement of the facts that establish the elements of the offense charged.

Subdivision (a) was amended, effective August 1, 2011, to eliminate language about the complaint being the initial charging document for all criminal offenses. N.D.C.C. § 29-04-05 was amended in 2011 to specify that "A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned."

Subdivision (a) was amended, effective March 1, 2013, to allow the complaint to be presented to the magistrate by telephone or other reliable electronic means under Rule 4.1.

Subdivision (c) is similar to Rule 7(e).

Subdivision (c) was amended, effective March 1, 2016, to a written

dismissal to be stated on the amended complaint if the prosecuting attorney chooses not to pursue charges raised in the initial complaint.

Rule 3 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015, pages 14-15; January 26-27, 2012, page 25; April 28-29, 2011, pages 17-18; April 24-25, 2003, pages 25-26; January 26-27, 1995, pages 3-5; April 28-29, 1994, pages 20-22; January 27-29, 1972, pages 4-7 September 27-28, 1968, pages 1-2; November 17-18, 1967, page 2.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-01-13(1), 29-05-02 to the extent that it requires a complaint to be subscribed and sworn to before a magistrate, 29-05-03, 33-12-03, 33-12-04, 33-12-05, 33-12-16, 33-12-25.

CONSIDERED: N.D.C.C. §§ 29-04-05, 12-01-04(12), 29-01-14, 29-02-06, 29-02-07, 29-04-05, 29-05-01, 29-05-05.

CROSS REFERENCE: N.D.R.Crim.P. 4.1 (Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means); N.D.R.Crim.P. 7 (The Indictment and the Information).

RULE 5. INITIAL APPEARANCE BEFORE THE MAGISTRATE

(a) General.

(1) Appearance Upon an Arrest. An officer or other person making an arrest must take the arrested person without unnecessary delay before the nearest available magistrate.

(2) Arrest Without a Warrant. If an arrest is made without a warrant, the magistrate must promptly determine whether probable cause exists under Rule 4(a). If probable cause exists to believe that the arrested person has committed a criminal offense, a complaint or information must be filed in the county where the offense was allegedly committed. A copy of the complaint or information must be given within a reasonable time to the arrested person and to any magistrate before whom the arrested person is brought, if other than the magistrate with whom the complaint or information is filed.

(b) Statement by the Magistrate at the Initial Appearance.

(1) In All Cases. The magistrate must inform the defendant of the following:

(A) the charge against the defendant and any accompanying affidavit;

(B) the defendant's right to remain silent; that any statement made by the defendant may later be used against the defendant;

(C) the defendant's right to the assistance of counsel before making any

statement or answering any questions;

(D) the defendant's right to be represented by counsel at each and every stage of the proceedings;

(E) if the offense charged is one for which counsel is required, the defendant's right to have legal services provided at public expense to the extent that the defendant is unable to pay for the defendant's own defense without undue hardship; and

(F) the defendant's right to be admitted to bail under Rule 46.

(2) Felonies. If the defendant is charged with a felony, the magistrate must inform the defendant also of:

(i) the defendant's right to a preliminary examination;

(ii) ~~and~~ the defendant's right to the assistance of counsel at the preliminary examination;

(iii) that a defendant who is not a United States citizen may request that an attorney for the state or a law enforcement officer notify a consular officer from the defendant’s country of nationality that the defendant has been arrested.

(3) Misdemeanors. If the defendant is charged with a misdemeanor, the magistrate must inform the defendant also of the defendant's right to trial by jury in all cases as provided by law and of the defendant's right to appear and defend in person or by counsel.

(c) Right to Preliminary Examination.

(1) Waiver.

(A) If the offense charged is a felony, the defendant has the right to a preliminary examination. The defendant may waive the right to preliminary examination at the initial appearance if assisted by counsel.

(B) If the defendant is assisted by counsel and waives preliminary examination and the magistrate is a judge of the district court, the defendant may be permitted to plead to the offense charged in the complaint or information at the initial appearance.

(C) If the defendant waives preliminary examination and does not plead at the initial appearance, an arraignment must be scheduled.

(D) The magistrate must admit the defendant to bail under the provisions of Rule 46.

(2) Non-waiver. If the defendant does not waive preliminary examination, the defendant may not be called upon to plead to a felony offense at the initial appearance. A magistrate of the county in which the offense was allegedly committed must conduct the preliminary examination. The magistrate must admit the defendant to bail under the provisions of Rule 46.

(d) ~~Interactive Television~~ Reliable Electronic Means. ~~Interactive television~~ Contemporaneous audio or audiovisual transmission by reliable electronic means may be used to conduct an appearance under this rule as permitted by N.D. Sup. Ct. Admin. R 52.

(e) Uniform Complaint and Summons.

(1) In General. Notwithstanding Rule 5(a), a uniform complaint and summons may be used in lieu of a complaint and appearance before a magistrate, whether an arrest is made or not, for an offense that occurs in an officer's presence or for a motor vehicle or game and fish offense. ~~When a uniform complaint and summons is issued for a felony offense, the prosecuting attorney must also subsequently file a complaint that complies with Rule 5(a).~~ An individual held in custody must be brought before a magistrate for an initial appearance without unnecessary delay.

(2) Duty of Prosecuting Attorney. When a uniform complaint and summons is issued for a felony offense, the prosecuting attorney must also subsequently file a complaint or information that complies with Rule 5(a). If the prosecuting attorney after review declines to prosecute a charge that has been filed with the court on a uniform complaint and summons, a dismissal of the charge must be stated on the complaint or information or filed separately with the court.

EXPLANATORY NOTE

Rule 5 was amended effective March 1, 1990; January 1, 1995; March 1, 2006; June 1, 2006; March 1, 2010; August 1, 2011; March 1, 2016.

Rule 5 is derived from Fed.R.Crim.P. 5. Rule 5 is designed to advise the defendant of the charge against the defendant and to inform the defendant of the defendant's rights. This procedure differs from arraignment under Rule 10 in that

the defendant is not called upon to plead.

Subdivision (a) provides that an arrested person must be taken before the magistrate "without unnecessary delay." Unnecessary delay in bringing a person before a magistrate is one factor in the totality of circumstances to be considered in determining whether incriminating evidence obtained from the accused was given voluntarily.

Subdivision (a) was amended, effective January 1, 1995, to clarify that a "prompt" judicial determination of probable cause is required in warrantless arrest cases.

Subdivision (b) is designed to carry into effect the holding of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966). Because the Miranda rule is constitutionally based, it applies to all officers whether state or federal. One should note that the protections required by Miranda apply as soon as a person "has been taken into custody or otherwise deprived of his freedom of action in any significant way," while the requirement that an accused be taken before a magistrate is applicable only to an "arrested person." The Miranda decision is based upon the Fifth Amendment privilege against self-incrimination, and holds that no statement obtained by interrogation of a person in custody is admissible, unless, before the interrogation begins, the accused has been effectively warned of the accused's rights, including the right not to answer questions and the right to have counsel present.

Subdivision (b) specifies the action which must be taken by the magistrate. Subparagraphs (b)(1)(A), (b)(1)(B), and (b)(1)(C) are stated by Miranda to be absolute prerequisites to interrogation and cannot be dispensed with on even the strongest showing that the person in custody was aware of those rights.

Paragraph (b)(1) was amended, effective June 1, 2006, to remove a reference to court appointment of counsel for indigents. Courts ceased appointing counsel for indigents on January 1, 2006, when the North Dakota Commission on Legal Counsel for Indigents became responsible for defense of indigents.

Paragraph (b)(2) provides an additional requirement to the instructions given by the magistrate in paragraph (b)(1) when the charge is a felony. It requires the magistrate to inform the defendant of the right to a preliminary examination. The Sixth Amendment right to counsel applies to a preliminary examination granted under state law because the preliminary examination is a critical stage of the state's criminal process.

Paragraph (b)(2) was amended, effective March 1, 2016, to require the defendant in a felony case to be informed at the initial appearance of the right of a defendant who is not a U.S. citizen to request that a consular officer be informed of the defendant's arrest. This amendment was based on the December 1, 2014 amendment to Fed.R.Crim.P. 5.

Subdivisions (b) and (c) were amended, effective March 1, 1990. The amendments track the 1987 amendments to Fed.R.Crim.P. 5, which are technical

in nature, and no substantive change is intended.

Subdivision (c) was amended, effective January 1, 1995, in response to elimination of county courts and to ensure that a defendant is not called upon to waive the preliminary examination or to plead without the assistance of counsel at the initial appearance.

Subdivision (d) was amended, effective March, 1, 2004, to permit the use of interactive television to conduct initial proceedings. Subdivision (d) was amended, effective March 1, 2006, to reference N.D.Sup.Ct.Admin.R. 52, which governs proceedings conducted by interactive television. Subdivision (d) was further amended, March 1, 2016, to allow the use of contemporaneous audio or audiovisual transmission by reliable electronic means to conduct initial proceedings.

Subdivision (e) was added, effective March 1, 2010, to provide a procedure for using the uniform complaint and summons. Statutory provisions governing the uniform complaint and summons, which is commonly referred to as the "uniform citation," are in N.D.C.C. §§ 20.1-02-14.1 and 29-05-31.

Subdivision (e) was amended, effective March 1, 2016, to require the prosecuting attorney to file a written dismissal if the prosecuting attorney decides not to pursue a charge filed with the court on a uniform complaint and summons.

Rule 5 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and

organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Rule 5 was amended, effective August 1, 2011, to include new language indicating that either "the complaint or information" can be used as a charging document. N.D.C.C. § 29-04-05 was amended in 2011 to specify that "A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned."

SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015, page 15; April 23-24, 2015, pages 14-15; April 28-29, 2011, pages 17-18; May 21-22, 2009, pages 2-10; April 27-28, 2006, pages 2-5, 15-17; January 29-30, 2004, pages 22-23; September 26-27, 2002, pages 12-13; January 27-28, 1994, pages 3-5; September 23-24, 1993, pages 4-7; April 20, 1989, page 4; December 3, 1987, page 15;February 22-23, 1973, page 18; March 23-24, 1972, pages 2-3, 11-12; January 27, 1972, pages 17-22; November 21-22, 1969, pages 2, 8-9, 17-19; May 3-4, 1968, pages 1-2; January 26-27, 1968, pages 7-9.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-05-04, 9-05-11, 29-05-17, 29-05-19, 29-07-01, 29-07-02, 29-07-04, 29-07-05, 29-07-07, 29-07-08, 29-07-09, 29-07-10, 33-12-07, 33-12-09.

CONSIDERED: N.D.C.C. §§ 20.1-02-14.1, 29-04-05, 29-05-31, 29-07-03, 29-07-06, 40-18-15, 40-18-16, 40-18-18.

CROSS REFERENCES: N.D.R.Crim.P. 5.1 (Preliminary Examination); N.D.R.Crim.P. 10 (Arraignment); N.D.R.Crim.P. 35 (Correcting or Reducing a Sentence); N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Crim.P. 44 (Right to and Assignment of Counsel); N.D. Sup. Ct. Admin. R. 52 (~~Interactive Television~~ Contemporaneous Transmission by Reliable Electronic Means).

RULE 5.1 PRELIMINARY EXAMINATION

(a) Probable Cause Finding. If the magistrate finds probable cause to believe an offense has been committed and the defendant committed the offense, an arraignment must be scheduled. The finding of probable cause may be based on hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. The magistrate may receive evidence that would be inadmissible at the trial.

(b) Discharge of the Defendant. If the magistrate hears evidence on behalf of the respective parties in a preliminary examination, and finds either a public offense has not been committed or there is not sufficient cause to believe the defendant guilty of the offense, the magistrate must discharge the defendant and dismiss the charge.

(c) Record. A verbatim record of the proceedings in the preliminary hearing must be made. Upon request of either party, a copy of the transcript of the record of proceedings must be furnished to the defendant and to the state. If a transcript is requested by the defendant, the cost of the transcript and related costs must be borne by the state if the magistrate finds the defendant is financially unable to pay for the transcript without undue hardship.

EXPLANATORY NOTE

Rule 5.1 was amended, effective February 12, 1982 on an emergency basis;

May 20, 1982, March 1, 1990; January 1, 1995; March 1, 1998; March 1, 2006; March 1, 2016.

The function of the preliminary examination is to determine whether there is probable cause to hold the accused for further action.

Subdivision (c) was amended, effective March 1, 2006, to require a verbatim record of preliminary hearing proceedings.

Rule 5.1 was amended, effective January 1, 1995, to conform with the structure of the state judiciary and the elimination of county courts.

Rule 5.1 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (b) was amended, effective March 1, 2016, to require the magistrate to dismiss the charge if the defendant is discharged.

SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015, page 15; January 29-30, 2004, pages 23-24; January 30, 1997, page 12; January 27-28, 1994, pages 5-8; September 23-24, 1993, pages 3-4 and 7-8; April 20, 1989, page 4; December 3, 1987, page 15; March 23-25, 1972, pages 3, 13-15; November 20-21, 1969, pages 8-9, 17-19; May 3-4, 1968, page 2.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-07-11, 29-07-12, 29-07-15, 29-07-16, 29-

07-17, 29-07-18, 29-07-19, 29-07-20, 29-07-21, 29-07-22, 29-07-23, 29-07-24, 29-07-25, 29-07-26, 29-07-27, 29-07-28, 29-07-29, 29-07-30, 29-07-31, 29-07-32.

CONSIDERED: N.D.C.C. §§ 29-07-01.1, 29-07-13, 29-07-14.

CROSS REFERENCES: N.D.R.Crim.P. 5 (Initial Appearance Before the Magistrate); N.D.R.Crim.P. 10 (Arraignment); N.D.R.Crim.P. 12 (Pleadings and Motions Before Trial; Defenses and Objections).

RULE 7. THE INDICTMENT AND THE INFORMATION

(a) When Used.

(1) Felony. All felony prosecutions in the district court must be by indictment after grand jury inquiry or by information.

(2) Misdemeanor. All misdemeanor and other prosecutions in the district court, including appeals, must be by indictment, information, or complaint.

(b) Waiver of Indictment. [Intentionally omitted].

(c) Nature and Contents.

(1) In General. The indictment or the information must name or otherwise identify the defendant, and must be a plain, concise, and definite written statement of the essential facts constituting the elements of the offense charged. It must be signed by the prosecuting attorney. Except for appeals from municipal court and municipal ordinance cases transferred under N.D.C.C. § 40-18-06.2, all prosecutions must be carried on in the name and by the authority of the State of North Dakota and must conclude "against the peace and dignity of the State of North Dakota." Except as required by this rule, the indictment or information need not contain a formal commencement, a formal conclusion, or any other matter not necessary to the statement. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or

more specific means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law which the defendant is alleged to have violated.

(2) Citation Error. Unless the defendant was prejudicially misled, neither an error in the citation nor its omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) Surplusage. On motion of either party or on its own motion, the court may strike surplusage from the information or indictment.

(e) Amending an Information. Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding. <u>If the prosecuting attorney chooses not to pursue a charge contained in the initial information, a dismissal of that charge must be stated in the amended information.</u>

(f) Bill of Particulars. The court may direct the filing of a bill of particulars. The defendant may move for a bill of particulars before arraignment or within one day after arraignment or at a later time if the court permits. The motion must be in writing and must specify the particulars sought by the defendant. A bill of particulars must be granted if the court finds it necessary to protect the defendant against a second prosecution for the same offense or to enable the defendant to adequately prepare for trial. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(g) Names of Witnesses to Be Endorsed on Indictment or Information. When an indictment or information is filed, the names of all the witnesses on whose evidence the indictment or information was based must be endorsed on it before it is presented. The prosecuting attorney, at a time the court prescribes by rule or otherwise, must endorse on the indictment or information the names of other witnesses the prosecuting attorney proposes to call. A failure to endorse those names does not affect the validity or sufficiency of the indictment or information, but the court in which the indictment or information was filed must direct the names of those witnesses to be endorsed on application of the defendant. The court may not allow a continuance because of the failure to endorse any of those names unless the application was made at the earliest opportunity and then only if a continuance is necessary in the name of justice.

EXPLANATORY NOTE

Rule 7 was amended effective March 1, 1990; January 1, 1995; March 1, 1996; March 1, 2006; March 1, 2007; August 1, 2011; March 1, 2013: March 1, 2016.

Rule 7 is an adaptation of Fed.R.Crim.P. 7 and controls all indictments and informations. Although North Dakota provides that a defendant may be prosecuted by indictment or information, indictments are seldom used.

Subdivision (a) was amended, effective January 1, 1995, in response to county court elimination. The amendment allows misdemeanors to be charged by

complaint in district court, and for the inclusion of misdemeanor charges with felony charges in an indictment or information.

Subdivision (a) was amended, effective March 1, 1996, to clarify that even though a felony is initially charged by complaint, the subsequent prosecution must be by indictment or information.

Subdivision (a) was amended, effective August 1, 2011, to delete language indicating that a preliminary examination was required before commencing a prosecution on an information. N.D.C.C. § 29-04-05 was amended in 2011 to specify that “A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned.”

Subdivision (b) entitled "Waiver of Indictment" is retained in title and number only to conform with the outline and form of Fed.R.Crim.P. 7. Article I, Section 10 of the North Dakota Constitution provides that an individual must be prosecuted by indictment in cases of felony unless otherwise provided by the legislature, but in all cases either by information or indictment. Since the legislature has provided the state with an alternative to a prosecution by indictment in N.D.C.C. § 29-09-02, it follows that under the state constitution, there is no right in the accused to demand prosecution by indictment.

The language of subdivision (c), "must be carried on in the name * * * of the State of North Dakota," does not mandate a change in the style of prosecution

before municipal courts. The purpose of the indictment or information is to inform the defendant of the precise offense of which the defendant is accused so that the defendant may prepare the defendant's defense and further that a judgment will safeguard the defendant from subsequent prosecution for the same offense. The language employed in subdivision (c) is intended to provide the defendant with the Sixth Amendment protection to "be informed of the nature and the cause of the accusation * * * ." With this view in mind, subdivision (c) is established for the benefit of the defendant and is intended simply to provide a means by which the defendant can be properly informed of the proceedings without jeopardy to the prosecution.

Subdivisions (c) and (g) were amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Subdivision (c) was amended, effective March 1, 2007, to specify that the indictment or information must contain a statement of the facts that establish the elements of the offense charged.

Subdivision (c) was amended, effective March 1, 2013, to clarify that municipal ordinance cases transferred to district court under N.D.C.C. § 40-18-06.2 are not prosecuted in the name of the State. When a municipal court case is appealed to district court, Rule 37 governs procedure.

The purpose of subdivision (d) is to protect the defendant against prejudicial allegations of irrelevant or immaterial facts.

Subdivision (e) was amended, effective March 1, 2016, to require a dismissal to be stated in the amended information if the prosecuting attorney chooses not to pursue charges raised in the initial information.

Rule 7 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

SOURCES: Joint Procedure Committee Minutes of September 30, 2011, pages 18-19; April 28-29, 2011, pages 17-18; January 26, 2006, page 3; January 29-30, 2004, pages 24-25; January 26-27, 1995, pages 3-5; January 27-28, 1994, pages 8-9; September 23-24, 1993, pages 8-10; April 20, 1989, page 4; December 3, 1987, page 15; March 23-25, 1972, pages 3-11; December 11-12, 1968, pages 1-2; July 25-26, 1968, pages 1-4.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-09-01, 29-09-03, 29-09-04, 29-09-05, Chapter 29-11.

CONSIDERED: N.D.C.C. §§ 29-09-02, 29-09-06, 29-09-07; 40-18-06.2.

CROSS REFERENCES: N.D.C.C. ch. 29-10.1 (Grand Jury); N.D.R.Crim.P. 37 (Appeal as of Right to District Court; How Taken).

RULE 10. ARRAIGNMENT

(a) In General. Arraignment must be conducted in open court and consists of:

(1) ensuring the defendant has a copy of the indictment, information, or complaint;

(2) reading the indictment, information, or complaint to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment, information or complaint.

If the defendant appears at the arraignment without counsel, the defendant must be informed of the right to counsel as provided in Rule 44.

(b) ~~Interactive Television~~ Reliable Electronic Means. ~~Interactive television~~ Contemporaneous audio or audiovisual transmission by reliable electronic means may be used to arraign a defendant as permitted by N.D. Sup. Ct. Admin. R 52.

EXPLANATORY NOTE

Rule 10 was amended, effective March 1, 1990; March 1, 2004; March 1, 2006; March 1, 2016.

Rule 10 follows Fed.R.Crim.P. 10 in substance and controls with respect to all arraignments which arise within the state.

Rule 10 is designed both to safeguard important rights of the defendant as

well as to protect proper administration of criminal law. The arraignment is an appearance before the court, intended to inform the accused of the charge against the accused and to obtain an answer from the accused. It is an important step in the criminal case, since it formulates the issue to be tried.

Failure to comply with the requirements of a proper arraignment is an irregularity that does not warrant a reversal of a conviction if not raised before trial. Under the rule, no specific time for the arraignment is set and no precise ceremonial or verbal formality need be followed.

Rule 10 was amended, effective March 1, 2004. The existing text of the rule was divided into subdivisions to improve clarity.

Subdivision (b) was added effective March 1, 2004, to permit the use of interactive television to conduct the arraignment. Subdivision (b) was amended, effective March 1, 2006, to reference N.D.Sup.Ct.Admin.R. 52, which governs proceedings conducted by ~~interactive television~~ remote means. Subdivision (b) was further amended, March 1, 2016, to allow the use of contemporaneous audio or audiovisual transmission by reliable electronic means to conduct the arraignment.

Rule 10 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, pages 13-14; April 29-30, 2004, pages 26-28;September 26-27, 2002, page 13; April 20, 1989, page 4; December 3, 1987, page 15; March 23-25, 1972, pages 20-23; May 3-4, 1968, pages 8-9; Fed.R.Crim.P. 10.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-11-56, 29-12-01, 29-13-01, 29-13-03, 29-13-04, 29-13-05, 29-13-06, 29-13-07, 29-13-08, 29-13-09, 33-12-15.

CROSS REFERENCE: N.D.R.Crim.P. 5 (Initial Appearance Before the Magistrate); N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Crim.P. 44 (Right to and Appointment of Counsel); N.D.Sup.Ct.Admin.R. 52 (~~Interactive Television~~ Contemporaneous Transmission by Reliable Electronic Means).

RULE 11. PLEAS

(a) Entering a plea.

(1) In general. A defendant may plead not guilty or guilty.

(2) Conditional plea. With the consent of the court and the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

(3) Failure to Enter a Plea. If a defendant refuses to enter a plea, the court must enter a plea of not guilty.

(b) Advice to defendant.

(1) The court may not accept a plea of guilty without first, by addressing the defendant personally [except as provided in Rule 43(b)] in open court, informing the defendant of and determining that the defendant understands the following:

(A) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(B) the right to a jury trial;

(C) the right to be represented by counsel at trial and at every other stage of the proceeding and, if necessary, the right to have the counsel provided under Rule

44;

(D) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(E) the defendant's waiver of these trial rights if the court accepts a plea of guilty;

(F) the nature of each charge to which the defendant is pleading;

(G) any maximum possible penalty, including imprisonment, fine, and mandatory fee;

(H) any mandatory minimum penalty; ~~and~~

(I) the court's authority to order restitution; and

(J) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring that a plea is voluntary. Before accepting a plea of guilty, the court must address the defendant personally in open court, unless the defendant's presence is not required under Rule 43(c), and determine that the plea is voluntary and did not result from force, threats, or promises other than promises in a plea agreement. The court must also inquire whether the defendant's willingness to plead guilty results from discussion between the prosecuting attorney and the defendant or the defendant's attorney.

(3) Determining the factual basis for a plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(4) Acknowledgment by defendant. Before entering judgment on a guilty plea, the court must determine that the defendant either:

(A) acknowledges facts exist that support the guilty plea; or

(B) while maintaining innocence, acknowledges that the guilty plea is knowingly, voluntarily and intelligently made by the defendant and that evidence exists from which the trier of fact could reasonably conclude that the defendant committed the crime.

(c) Plea agreement procedure.

(1) In general. The prosecuting attorney and the defendant's attorney, or the defendant when acting pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty to either a charged offense or a lesser or related offense, the plea agreement may specify that the prosecuting attorney will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence is appropriate; or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case.

(2) Disclosing a plea agreement. The parties must disclose the plea

agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial consideration of a plea agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a plea agreement. If the court accepts the plea agreement, it must inform the defendant that, to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a plea agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court:

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the

court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(6) Time of plea agreement procedure. Except for good cause shown, notification to the court of the existence of a plea agreement must be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(d) Withdrawing a guilty plea.

(1) In general. A defendant may withdraw a plea of guilty:

(A) before the court accepts the plea, for any reason or no reason; or

(B) after the court accepts the plea, but before it imposes sentence if:

(i) the court rejects a plea agreement under Rule 11(c)(5); or

(ii) the defendant can show a fair and just reason for the withdrawal.

(2) Finality of a guilty plea. Unless the defendant proves that withdrawal is necessary to correct a manifest injustice, the defendant may not withdraw a plea of guilty after the court has imposed sentence.

(3) Prosecution reliance on plea. If the prosecution has been substantially prejudiced by reliance on the defendant's plea, the court may deny a plea withdrawal request.

(e) Admissibility or inadmissibility of a plea, plea discussions, and related statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by N.D.R.Ev. 410.

(f) Recording the proceedings. A verbatim record of the proceedings at

which the defendant enters a plea must be made. If there is a plea of guilty, the record must include the court's inquiries and advice to the defendant required under Rule 11(b) and (c).

(g) Defendant's presence at plea proceeding. A plea of guilty may be made only by the defendant, in open court, unless the defendant is a corporation, in which case it may be made by counsel; or in a non-felony case, the defendant may petition to enter a plea of guilty as provided in Rule 43(b).

EXPLANATORY NOTE

Rule 11 was amended, effective March 1, 1986; March 1, 1990; March 1, 1996; March 1, 2006; June 1, 2006; March 1, 2010; March 1, 2014; March 1, 2016.

Rule 11 is similar to Fed.R.Crim.P. 11. The rule is designed to accomplish a number of objectives: (1) it prescribes the advice that the court must give to ensure the defendant who pleads guilty has made an informed plea; and (2) it provides for a plea agreement procedure designed to give recognition to the propriety of plea discussions between counsel, to bring the existence of a plea agreement out in open court, and to provide methods for court acceptance or rejection of the plea agreement.

Rule 11 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily

understood and to make style and terminology consistent throughout the rules.

Subdivision (a) provides for the various alternative pleas which the defendant may enter. This subdivision does not permit a defendant to enter a plea of nolo contendere and differs from the federal rule in that respect.

Paragraph (a)(2) was adopted effective March 1, 1986. This provision allows the defendant, with the approval of the court and the consent of the prosecuting attorney, to enter a conditional plea of guilty and reserve in writing the right, on appeal of the adverse determination of any specified pretrial motion. The conditional plea procedure is intended to conserve prosecutorial and judicial resources and advance speedy trial objectives by avoiding the necessity of a trial simply to preserve pretrial issues for appellate review.

Subdivision (b) prescribes the advice which the court must give to the defendant as a prerequisite to the acceptance of a plea of guilty. The court is required to determine that a plea is made with an understanding of the nature of the charge and the consequences of the plea. Subdivision (b) also establishes the requirement that the court address the defendant personally.

Paragraph (b)(1) requires the court to determine if the defendant understands the nature of the charge and requires the court to inform the defendant of and determine that the defendant understands the mandatory minimum punishment, if any, and the maximum possible punishment. The objective is to insure that the defendant knows what minimum sentence the judge MUST impose

and the maximum sentence the judge MAY impose and, further, to explain the consecutive sentencing possibilities when the defendant pleads to more than one offense. This provision is included so that the judicial warning effectively serves to overcome subsequent objections by the defendant that the defendant's counsel gave the defendant erroneous information. Paragraph (b)(1) also specifies the constitutional rights the defendant waives by a plea of guilty and ensures a knowing and intelligent waiver of counsel is made. A similar requirement is found in Rule 5(b) governing the initial appearance.

Paragraph (b)(1) was amended, effective June 1, 2006, to remove a reference to court appointment of counsel for indigents. Courts ceased appointing counsel for indigents on January 1, 2006, when the North Dakota Commission on Legal Counsel for Indigents became responsible for defense of indigents.

Paragraph (b)(1) was amended, effective March 1, 2016, to include a new subparagraph (J) requiring the court to include a general statement that there may be immigration consequences of conviction in the advice provided to the defendant before the court accepts a plea of guilty or nolo contendere. The amendment, which is based on an amendment to Fed.R.Crim.P. 11, mandates a generic warning, not specific advice concerning the defendant's individual situation.

Paragraph (b)(2) requires the court to determine that a plea of guilty is voluntary before accepting it. Paragraph (b)(2), together with subdivision (c), affords the court an adequate basis for rejecting an improper plea agreement

induced by threats or inappropriate promises. The rule specifies that the court personally address the defendant in determining the voluntariness of the plea.

Paragraph (b)(3) requires that the court not enter judgment on a plea of guilty without making an inquiry to ensure that there is a factual basis for the plea.

Paragraph (b)(4) was added to the rule, effective March 1, 2014, and requires the court to obtain an acknowledgment from the defendant on whether the defendant is admitting guilt, or instead is maintaining innocence but pleading guilty because evidence exists from which the trier of fact could reasonably conclude the defendant committed the crime.

Subdivision (c) provides for a plea agreement procedure. In doing so it gives recognition to the propriety of plea discussions and plea agreements, provided they are disclosed in open court and subject to acceptance or rejection by the trial judge. It is believed that where the defendant by the defendant's plea aids in insuring prompt and certain application of correctional measures, the proper ends of the criminal justice system are furthered because swift and certain punishment serves the ends of both general deterrence and the rehabilitation of the individual defendant. The procedure described in subdivision (c) is designed to prevent abuse of plea discussions and agreements by providing appropriate and adequate safeguards.

Paragraph (c)(1) specifies that both the attorney for the prosecution and the attorney for the defense, or the defendant when acting pro se, participate in plea

discussions. It also makes clear that there are three possible concessions that may be made in a plea agreement: first, the charge may be reduced to a lesser or related offense; second, the attorney for the prosecution may agree not to recommend or not oppose the imposition of a particular sentence; or third, the attorney for the prosecution may promise to move for a dismissal of other charges. The court is not permitted to participate in plea discussions because of the possibility that the defendant would believe that the defendant would not receive a fair trial, if no agreement had been reached or the court rejected the agreement, and a subsequent trial ensued before the same judge.

Paragraph (c)(2) provides that the parties must disclose any plea agreement in open court or, for good cause, in camera.

Paragraph (c)(3) gives the court, upon notice of the plea agreement, the option of accepting or rejecting the agreement or deferring its decision until receipt of the presentence report. The court must inform the defendant that it may choose not to accept a sentence recommendation made as part of a plea agreement. Decisions on plea agreements are left to the discretion of the individual trial judge.

Paragraph (c)(4) requires the court, if it accepts the plea agreement, to inform the defendant that it will embody in the judgment and sentence the disposition provided in the plea agreement, or one more favorable to the defendant. This provision serves the dual purpose of informing the defendant immediately that the agreement will be implemented.

Paragraph (c)(5) requires the court, on the record, upon its rejection of the plea agreement, to inform the defendant of this fact and to advise the defendant personally, in open court, or for good cause, in camera, that the court is not bound by the plea agreement. The defendant must be afforded an opportunity to withdraw the defendant's plea and must be advised that if the defendant persists in the defendant's guilty plea, the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.

Paragraph (c)(6) requires that the court be notified of the existence of a plea agreement at the arraignment or at another time prior to trial fixed by the court unless it can be shown that for good cause this was not done. Having a plea entered at this stage provides a reasonable time for the defendant to consult with counsel and for counsel to complete any plea discussions with the attorney for the prosecution. The objective of the provision is to make clear that the court has authority to require a plea agreement to be disclosed sufficiently in advance of trial so as not to interfere with the efficient scheduling of criminal cases.

A new subdivision (d) on plea withdrawal was transferred to Rule 11 from Rule 32 effective March 1, 2010.

Subdivision (e) makes it clear that N.D.R.Ev. 410 governs the admissibility of plea discussions.

Subdivision (f) requires that a verbatim record be kept of the proceedings. The record is important in the event of a post-conviction attack.

Subdivision (g) was amended, effective March 1, 1996, to reference Rule 43(c). In a non-felony case, if the defendant wants to plead guilty without appearing in court, a written form must be used which advises the defendant of his or her constitutional rights and creates a record showing that the plea was made voluntarily, knowingly, and understandingly. See Appendix Form 17. A court may accept a guilty plea via ~~interactive television~~ contemporaneous audio or audiovisual transmission by reliable electronic means using the procedure set out in N.D. Sup. Ct. Admin. R. 52.

Rule 11 does not include a subdivision entitled harmless error and differs from the 1983 amendment to Fed.R.Crim.P. 11(h) in that respect. Rule 52(a), Harmless Error, is intended to have general application to all the criminal rules of procedure.

Sources: Joint Procedure Committee Minutes of April 23-24, 2015, page 14; January 29-30, 2015, page 23; January 31-February 1, 2013, page 12; September 27, 2012, pages 18-21; January 29-30, 2009, pages 11-13, 19-20; April 27-28, 2006, pages 2-5, 15-17; September 22-23, 2005, pages 17-18; September 23-24, 2004, pages 5-9; April 29-30, 2004, pages 28-30; January 26-27, 1995, pages 5-6; September 29-30, 1994, pages 2-4; April 28-29, 1994, pages 10-12; April 20, 1989, page 4; December 3, 1987, page 15; June 22, 1984, pages 11-16; April 26, 1984, pages 2-3; April 26-27, 1979, pages 4-7; May 25-26, 1978, pages 31-34; March 16-17, 1978, page 20; January 12-13, 1978, pages 5-6; January 10,

1977, page 4; April 24-26, 1973, pages 8-9; December 11-15, 1972, page 43; May 11-12, 1972, pages 2-6; November 18-20, 1971, pages 34-38; September 17-18, 1970, pages 1-6; May 3-4, 1968, page 9.

Statutes Affected:

Superseded: N.D.C.C. §§ 29-13-02, 29-14-01, 29-14-02, 29-14-14, 29-14-15, 29-14-16, 29-14-17, 29-14-18, 29-14-19, 29-14-20, 29-14-21, 29-14-22, 29-14-23, 29-14-24, 29-14-26, 29-14-27, 33-12-17, 33-12-18.

Considered: N.D.C.C. § 31-13-03.

Cross Reference: N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Crim.P. 44 (Right to and Appointment of Counsel); N.D.R.Ev. 410 (Offer to Plead Guilty; Nolo Contendere; Withdrawn Plea of Guilty); N.D.Sup.Ct.Admin.R. 52 (~~Interactive Television~~ Contemporaneous Transmission by Reliable Electronic Means).

RULE 12. PLEADINGS AND PRETRIAL MOTIONS

(a) Pleadings. The pleadings in a criminal proceeding are the indictment, information and complaint in district court, the complaint in municipal court, and the pleas of not guilty and guilty.

(b) Pretrial Motions.

(1) In General. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits. Rule 47 applies to a pretrial motion.

(2) ~~Motions That May Be Made Before Trial. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.~~ Motions That May Be Made at Any Time. A motion that the court lacks jurisdiction may be made at any time while the case is pending.

(3) Motions That Must Be Made Before Trial. The following defenses, objections and requests must be raised ~~before trial~~ by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

(A) ~~a motion alleging~~ a defect in instituting the prosecution, including:

(i) improper venue;

(ii) preindictment delay

(iii) a violation of the right to speedy trial;

(iv) selective or vindictive prosecution;

(v) an error in the grand-jury proceeding or preliminary hearing;

(B) ~~a motion alleging~~ a defect in the indictment, information, or complaint~~—~~ ~~but at any time while the case is pending, the court may hear a claim that the indictment, information or complaint fails to invoke the court's jurisdiction or to state an offense;~~ , including:

(i) joining two or more offenses in the same count (duplicity);

(ii) charging the same offense in more than one count (multiplicity);

(iii) lack of specificity;

(iv) improper joinder; and

(v) failure to state an offense;

(C) ~~a motion to suppress~~ suppression of evidence;

(D) ~~a Rule 14 motion to sever~~ severance of charges or defendants under Rule 14; and

(E) ~~a Rule 16 motion~~ discovery under Rule 16.

(4) Notice of the Prosecution's Intent to Use Evidence.

(A) At the Prosecution's Discretion. At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) At the Defendant's Request. At the arraignment or as soon afterward as

practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the prosecution's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) ~~Motion~~ Deadline for a Pretrial Motion; Consequences of Not Making a Timely Motion.

(1) Setting the Deadline. The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. If the court does not set one, the deadline is the start of trial.

(2) Extending or Resetting the Deadline. At any time before trial, the court may extend or reset the deadline for pretrial motions.

(3) Consequences or Not Making a Timely Motion Under Rule 12(b)(3). If a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.

(d) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) ~~Waiver of a Defense, Objection, or Request. A party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides. For good cause, the court may grant relief from the waiver.~~ [Reserved]

(f) Recording the Proceedings. Except in municipal courts, a verbatim record must be made of all proceedings at the motion hearing, including any findings of fact and conclusions of law made orally by the court.

(g) Defendant's Continued Custody or Release Status. If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the complaint, in the indictment, or in the information, it may order the defendant to be held in custody or that bail be continued for a specified time until a new indictment, information, or complaint is filed.

EXPLANATORY NOTE

Rule 12 was amended, effective January 1, 1980; September 1, 1983; January 1, 1995; March 1, 2006; March 1, 2016.

Rule 12 is similar to Fed.R.Crim.P. 12 with modifications to conform to practice in North Dakota.

Rule 12 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (a) was amended, effective September 1, 1983, to delete obsolete references to the county court with increased jurisdiction and the county justice court. Subdivision (a) was further amended, effective January 1, 1995, in response to county court elimination. The amendment provides for use of the complaint in district court.

All objections or defenses raised before trial must be made by a motion to dismiss or by motion to grant appropriate relief as provided in these rules. Selection of a wrong plea will no longer be a hazard, since there is now but one mode of raising all objections and defenses. If counsel, unaware of procedural changes, ignorantly interposes an obsolete plea or motion, it may be considered as a motion to dismiss.

Subdivision (b) was amended, effective March 1, 2016, ~~provides~~ to provide specific guidance for pretrial motions:

Paragraph (b)~~(2)~~(1) provides that any defense or objection that is capable of determination without trial ~~of the general issue~~ on the merits may be raised by motion before trial.

Paragraph (b)(2) allows lack of jurisdiction to be raised at any time the case is pending.

Paragraph (b)(3) provides that certain motions must be made prior to trial and follows the federal rule in delineating these motions. Paragraph (b)(3) was amended, effective March 1, 2016, to include a list of specific motions that must

be made pretrial if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits.

Paragraph (b)(4) follows the federal rule and provides a method for insuring that the defendant knows what evidence the prosecution intends to offer into evidence at trial in order to afford the defendant an opportunity to raise objections to the evidence prior to trial.

~~Subdivision (c) follows the federal rule and provides that a time for the making of pretrial motions must be fixed at the time of the arraignment or as soon afterward as practicable.~~

Subdivision (c) was amended, effective March 1, 2016, to govern both the deadline for making pretrial motions and the consequences for failing to meet the deadline. It contains three paragraphs: Paragraph (c)(1) explains how the deadline for pretrial motions is set, Paragraph (c)(2) specifically allows the court discretion to reset motion deadlines, and Paragraph (c)(3) explains the treatment of untimely motions.

Subdivision (d) follows the federal rule and was amended, effective January 1, 1980, to require the existence of "good cause" to defer ruling on a pretrial motion, with the intent of discouraging the tendency to reserve ruling on pretrial motions. Moreover, the court cannot defer its ruling if to do so will adversely affect a party's right to appeal. This protects certain prosecution appeal rights which could be deprived by a deferred ruling.

~~Subdivision (e) follows the federal rule and provides that the defendant shall waive the defenses or objections specified in paragraph (b)(3) if those defenses and objections are not raised at the time set in subdivision (c). The court may grant relief from the waiver if adequate cause is shown.~~

Subdivision (e) was deleted, effective March 1, 2016. Paragraph (c)(3) deals with the effect of failure to raise issues in a pretrial motion.

Subdivision(f) follows the federal rule except that a verbatim record of the hearing need not be made in municipal court.

The omission of the sentence "This rule does not affect any federal statutory period of limitations," from subdivision (g) is made because North Dakota does not have statutes comparable to the federal statutes.

Rule 12 does not have a subdivision (h) to correspond to the to the federal rule. Fed.R.Crim.P. (12)(h) was adopted to make the provisions of Fed.R.Crim.P. 26.2, Production of Statements of Witnesses, applicable to hearings on a motion to suppress evidence. The effect of the federal rule is that after a witness other than the defendant has testified at a suppression hearing, any statement of that witness in the possession of the party calling the witness shall be available to the other party for examination and use. In North Dakota, under Rule 16, a witness' statements are discoverable at any point in the proceedings, rather than only after a witness has testified.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015,

pages 25-26; January 27-28, 2005, pages 3-6; January 27-28, 1994, pages 9-10; September 23-24, 1993, pages 9-10; April 20, 1989, page 4; December 3, 1987, page 15; June 22, 1984, pages 16-19; February 17-18, 1983, pages 25-32; December 7-8, 1978, pages 3-8; October 12-13, 1978, pages 1-2; May 11-12, 1972, pages 7-13; July 25-26, 1968, pages 4-6.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-11-01, 29-11-02, 29-11-13, 29-14-01, 29-14-03, 29-14-04, 29-14-05, 29-14-06, 29-14-07, 29-14-08, 29-14-09, 29-14-10, 29-14-11, 29-14-12, 29-14-13, 29-14-14, 29-14-15, 29-14-25.

CROSS REFERENCE: N.D.R.Crim.P. 14 (Relief from Prejudicial Joinder); N.D.R.Crim.P. 16 (Discovery and Inspection); N.D.R.Crim.P. 17.1 (Omnibus Hearing and Pretrial Conference); N.D.R.Crim.P. 47 (Motions).

RULE 15. DEPOSITIONS

(a) When taken. At any time after the defendant has appeared, any party may take testimony of any person by deposition including audio-visual depositions taken as provided in Rule 30.1, except:

(1) the defendant may not be deposed unless the defendant consents and the defendant's lawyer, if the defendant has one, is present or the defendant waives the lawyer's presence;

(2) a discovery deposition may be taken after the time set by the court only with leave of court;

(3) a deposition to perpetuate testimony may be taken only with leave of court, which must be granted upon motion of any party if it appears that the deponent may be able to give material testimony but may be unable to attend a trial or hearing; and

(4) upon motion of a party or of the deponent and upon a showing that the taking of the deposition does or will unreasonably annoy, embarrass, or oppress, or cause undue burden or expense to, the deponent or a party, the court in which the prosecution is pending or a court of the jurisdiction where the deposition is being taken may order that the deposition not be taken or continued or may limit the scope and manner of its taking. Upon demand of the objecting party or deponent, the taking of the deposition may be suspended for the time necessary to make the

motion.

Attendance of witnesses and production of documentary evidence and objects may be compelled by subpoena under Rule 17.

(b) Witness who would not respond to subpoena. If a party is granted leave to take a deposition to perpetuate testimony, the court, upon motion of the party and a showing of probable cause to believe that the deponent would not respond to a subpoena, by order must direct a law enforcement officer to take the deponent into custody and hold the deponent until the taking of the deposition commences but not to exceed six hours and to keep the deponent in custody during the taking of the deposition. If the motion is by the prosecuting attorney, the court, upon further motion by the prosecuting attorney and a showing of probable cause to believe the defendant would not otherwise attend the taking of the deposition, may make the same order for the defendant.

(c) Notice of taking. The party at whose instance the deposition is to be taken shall give all parties reasonable written notice of the name and address of each person to be examined, the time and place for the deposition, and the manner of recording. Upon motion of a party or of the deponent, the court may change the time, place, or manner of record.

(d) How taken. The deposition must be taken in the manner provided in civil actions, except:

(1) if the deposition is taken at a place over which this state lacks

jurisdiction, it may be taken instead in the manner provided by the law of that place;

(2) it must be recorded by the means specified in the notice; and

(3) upon motion of a party and a showing that a party or the deponent is engaging in serious misconduct at the taking of a deposition, the court by order may direct that the deposition's taking be continued in the presence of a designated officer, in which case the designated officer may preside over the remainder of the deposition's taking.

(e) Place of taking. The deposition must be taken in a building where the trial may be held, at a place agreed upon by the parties, or at a place designated by special or general order of the court. If the defendant is in custody or subject to terms of release that prohibit leaving the state and does not appear before the court and understandingly and voluntarily waives the right to be present, a deposition to perpetuate testimony must not be taken at a place which requires transporting the defendant within a jurisdiction that does not confer upon law enforcement offi` cers of this state the right to transport prisoners within it.

(f) Presence of defendant.

(1) At discovery deposition. The defendant may be present at the taking of a discovery deposition, but if the defendant is in custody, the defendant may be present only with leave of court.

(2) At deposition to perpetuate testimony. The defendant must be present at

the taking of a deposition to perpetuate testimony, but if the defendant's counsel is present at the taking:

(A) the court may excuse the defendant from being present if the defendant appears before the court and understandingly and voluntarily waives the right to be present;

(B) the taking of the deposition may continue if the defendant, present when it commenced, leaves voluntarily; or

(C) if the deposition's taking is presided over by a judicial officer, the judicial officer may direct that the deposition's taking or part of the deposition's taking be conducted in the defendant's absence if the judicial officer has justifiably excluded the defendant because of the defendant's disruptive conduct.

(3) Unexcused absence. If the defendant is not present at the commencement of the taking of a deposition to perpetuate testimony and the defendant's absence has not been excused:

(A) its taking may proceed, in which case the deposition may be used only as a discovery deposition; or

(B) if the deposition is taken at the instance of the prosecution, the prosecuting attorney may direct that the commencement of its taking be postponed until the defendant's attendance can be obtained, and the court, upon application of the prosecuting attorney, by order may direct a law enforcement officer to take the defendant into custody during the taking of the deposition.

(4) Taking Depositions Outside the United States Without the Defendant's Presence. The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case-specific findings of all the following:

(A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;

(B) there is a substantial likelihood that the witness's attendance at trial cannot be obtained;

(C) the witness's presence for a deposition in the United States cannot be obtained;

(D) the defendant cannot be present because:

(i) the country where the witness is located will not permit the defendant to attend the deposition;

(ii) for an in-custody defendant, secure transportation and continuing custody cannot be assured at the witness's location; or

(iii) for an out-of-custody defendant, no reasonable conditions will assure an appearance at the deposition or at trial or sentencing; and

(E) the defendant can meaningfully participate in the deposition through reasonable means.

(g) Payment of expenses. If the deposition is taken at the instance of the prosecution, the court may, and in all cases where the defendant is unable to bear

the expense the court must, direct the state to pay the expense of taking the deposition, including the reasonable expenses of travel and subsistence of defense counsel and, if the deposition is to perpetuate testimony or if the court permits for a discovery deposition, of the defendant in attending the deposition.

(h) Substantive use on grounds of unavailability. So far as otherwise admissible under the rules of evidence, a deposition to perpetuate testimony may be used as substantive evidence at the trial or upon any hearing if the deponent is unavailable as defined in N.D.R.Ev. 804(a). A discovery deposition may then be so used if the court determines that the use is fair in light of the nature and extent of the total examination at the taking thereof, but it may be offered by the prosecution only if the defendant was present at its taking. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it that is relevant to the part offered.

(i) Objections to admissibility. Objections to receiving in evidence a deposition or part of a deposition may be made as provided in civil actions.

(j) Deposition by agreement not precluded. Nothing in this rule precludes the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties.

EXPLANATORY NOTE

Rule 15 was amended, effective January 1, 1980; March 1, 1990; March 1, 2006; March 1, 2016.

Rule 15 is substantially the same as Rule 431, Uniform Rules of Criminal Procedure (1974). Former Rule 15, effective until January 1, 1980, was an adaptation of Fed.R.Crim.P. 15. The present rule provides for a greatly expanded use of depositions in criminal cases. Subdivisions (a), (b), (f) and (h) were amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 15 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (a) permits depositions to be taken to perpetuate testimony, as in the former rule, but also for discovery purposes, which was not previously provided for. Rather than requiring court approval of discovery depositions, this subdivision changes the emphasis by allowing them without court approval, subject to the right of a party or deponent to move under paragraph (4) to have a court order that the deposition be continued, not taken, or limited in scope or manner of taking. The court will set a time after which discovery depositions may not be taken without court permission. Leave of court is required for the taking of a deposition to perpetuate testimony.

Subdivision (a) was amended, effective March 1, 1990. The amendment was made to clarify the fact that audio-visual depositions may be taken under the

rule. The amendment also provides that the method of taking audio-visual depositions is governed by N.D.R.Civ.P. 30.1.

Subdivision (b) provides a method for securing the attendance of a dependent who would not respond to a subpoena. In addition, to ensure confrontation and the presence of the defendant required by subdivision (f)(2) to use the deposition at trial, the prosecuting attorney may move the court for an order to secure defendant's presence at the taking of a deposition.

Requirements for notice of the taking of a deposition are set forth in subdivision (c). The court may change the noticed time, place, or manner of recording upon motion of the deponent, as well as any party.

Subdivision (d) specifies that a deposition be taken in the same manner as in civil actions, with certain exceptions. Paragraph (1) covers depositions on enclaves over which the State of North Dakota lacks jurisdiction, such as Indian reservations, as well as depositions outside the physical boundaries of the state. Paragraph (2) allows depositions to be recorded by other than stenographic means, without a court order. Provision is made in paragraph (3) for a court to designate an official to preside over a deposition upon a showing of misconduct by a party or the deponent.

The place of taking a deposition is governed by subdivision (e). Restriction is placed on taking depositions outside of this state in situations where the defendant may not travel or be transported to the proposed location, unless the

defendant waives the right to be present.

Subdivision (f) concerns the presence of the defendant at a deposition. Distinction is made between a discovery deposition and one to perpetuate testimony. The defendant is not required to be present at a discovery deposition, but the defendant's presence may enable the prosecution to use the deposition as substantive evidence at trial, as provided in subdivision (h). The taking of a deposition to perpetuate testimony necessitates the defendant's presence, with ~~three~~ four exceptions: defendant is excused by the court upon an appearance and voluntary waiver of the right to be present; defendant is voluntarily absent after start of deposition; ~~or if~~ a judicial officer presiding over the deposition justifiably excludes the defendant because of the defendant's disruptive conduct; or the court allows a deposition to be taken outside the United States without the defendant's presence after making case-specific findings. No warning is expressly required before exclusion, as in Rule 43(b)(2). If the defendant is not present at a deposition to perpetuate testimony under one of the above exceptions, the defendant's counsel must be.

Paragraph (3) of subdivision (f) covers the situation when the defendant is not present at the start of a deposition to perpetuate testimony and has not been excused under paragraph (2). The taking may proceed as a discovery deposition or the prosecuting attorney, if the prosecuting attorney is taking the deposition, may postpone the taking and secure a court order to take the defendant into custody to

assure the defendant's presence, so that the deposition will have the greater admissibility of a perpetuation deposition.

Paragraph (f)(4) was adopted, effective March 1, 2016, to allow a deposition to be taken outside the United States without the defendant's presence in certain specified circumstances. The provision was based on Fed.R.Crim.P. 15(c)(3).

Sources: Joint Procedure Committee Minutes of April 23-24, 2015, pages 26-27; January 27-28, 2005, page 12; April 20, 1989, pages 4-5; March 24-25, 1988, pages 6-7; December 3, 1987, pages 9-10 and 15; January 25-26, 1979, pages 5-7; December 7-8, 1978, pages 33-37; October 12-13, 1978, page 3; April 24-26, 1973, pages 9-10; June 26-27, 1972, page 3; December 11-12, 1968, pages 2-24; September 26-27, 1968, pages 2-6; Rule 431, Uniform Rules of Criminal Procedure (1974).

Statutes Affected:

Superseded: N.D.C.C. ch. 31-06.

Considered: N.D.C.C. ch. 31-04.

Cross Reference: N.D.R.Crim.P. 17 (Subpoena); N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Civ.P. 30.1 (Uniform Audio-Visual Deposition Rule); N.D.R.Ev. 804 (Hearsay Exceptions; Declarant Unavailable).

RULE 20. TRANSFER FROM THE COUNTY FOR PLEA AND SENTENCE

(a) Consent to Transfer. A prosecution may be transferred from the county where the indictment, information, or complaint is pending to the county where the defendant is arrested, held or present if:

(1) the defendant states in writing an intention to plead guilty and to waive trial in the county where the indictment, information, or complaint is pending, consents in writing to the court's disposing of the case in the transferee county and files the statement in the transferee county; and

(2) the prosecuting attorneys for each county approve the transfer in writing.

(b) Clerk's Duties. After receiving the defendant's statement and the required approvals, the clerk of court where the indictment, information, or complaint is pending ~~shall send the file, or a certified copy,~~ must electronically transfer the file within the Odyssey® system to the clerk of court in the transferee county.

(c) Effect of Not Guilty Plea. If the defendant pleads not guilty after the case has been transferred under Rule 20(a), the clerk of court ~~shall return the documents~~ must electronically transfer the file within the Odyssey® system to the court where the prosecution began, and the court must restore the proceeding to its docket. The defendant's statement of intention to plead guilty is not, in any civil or

criminal proceeding, admissible against the defendant.

EXPLANATORY NOTE

Rule 20 was amended, effective March 1, 1990; March 1, 2006; March 1, 2016.

Rule 20 is an adaptation of Fed.R.Crim.P. 20. It permits a defendant, arrested, held, or present in a county other than that in which the indictment, information, or complaint is pending against the defendant, to state in writing that the defendant wishes to plead guilty, to waive trial in the county in which charges against the defendant are pending and to consent to disposition of the case in the county in which the defendant was arrested, is held, or is present, subject to the approval of the prosecuting attorney for each county. This procedure may be used between counties in the state and is not limited to those counties in the same judicial district. The rule benefits the defendant in that it permits a speedy disposition of the defendant's case, if the defendant desires to plead guilty, without the hardship which may be involved in transferring the defendant back to the county in which the defendant was charged. This may be desirable for a defendant who is arrested or surrenders at or near the defendant's residence for a crime committed elsewhere in the state. The benefit to the state is the savings in transportation expenses. The requirement that the prosecuting attorneys of both counties must consent to this action by the defendant provides the necessary safeguards for the state.

Rule 20 was amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 20 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subdivision (c) provides that a defendant is not obligated by a request for a transfer under Rule 20(a). If the defendant decides not to plead guilty, the defendant ~~shall~~ must be tried in the county where the information was originally filed. However, the written statement may not be used against the defendant.

Subdivisions (b) and (c) were amended, effective March 1, 2016, to require electronic transfer of case files.

SOURCES: Joint Procedure Committee Minutes of January 29-30, 2015, pages 22-23; January 27-28, 2005, pages 16-17; April 20, 1989, page 4; December 3, 1987, page 15; December 7-8, 1978, pages 14-15; October 12-13, 1978, pages 8-9; October 17-20, 1972, pages 4-5; September 26-27, 1968, pages 8-9; Fed.R.Crim.P. 20.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. §§ 33-12-12, 33-12-13.

CROSS REFERENCES: N.D.R.Crim.P. 32 (Sentencing and Judgment).

RULE 21. TRANSFER FROM THE COUNTY FOR TRIAL

(a) For Prejudice in the County. Upon the defendant's motion, the court must transfer the proceeding against the defendant to another county if the court is satisfied that so great a prejudice against the defendant exists in the transferring county that the defendant cannot obtain a fair and impartial trial there.

(b) For Convenience and Justice. Upon the defendant's motion, the court may transfer the proceeding against the defendant to another county for the convenience of the parties and witnesses and in the interest of justice.

(c) Upon Motion of the Court. Upon its own motion, the court may transfer the trial to another county. If any party files an objection to the transfer no later than ten days after notification of the place of trial, the trial must be held at the original location unless grounds exist for transfer under Rule 21(a), (b) or (f).

(d) Proceedings on Transfer.

~~(1) Transfer of File. When the court orders a transfer, the clerk shall send to the transferee court the file, or a certified copy, and any bail taken. The prosecution will then continue in the transferee county.~~

~~(2) Conduct of Case.~~ Upon a transfer under Rule 21, the prosecuting attorney of the county where the action or proceeding was commenced, or any other person appointed to prosecute, ~~shall~~ must prosecute the case, and the judge ordering the transfer ~~shall~~ must preside at the trial. The action or proceeding, except for the payment and collection of costs, must be conducted as if it had been commenced in the transferee court.

~~(e) Transfer of Records. After acquittal or conviction in the action or proceeding, the transferee court must retransmit all documents in the action or proceeding to the court where the action was commenced.~~

~~(f)~~ (e) Transfer by Prosecution. Upon the prosecution's motion, the court may transfer the proceeding for the reasons listed in Rule 21(a) and (b).

~~(g)~~ (f) Transfer of Defendant. The transferring court must order the officer who has the defendant in custody to transfer the defendant to the custody of the proper officer of the transferee county. The transfer must be made under the terms of the order.

EXPLANATORY NOTE

Rule 21 was amended, effective March 1, 1990; March 1, 2001; March 1, 2006; March 1, 2016.

Rule 21 was amended, effective March 1, 2001. A new subdivision (c) allows a court to transfer a trial to another county when there is no objection. In deciding to move a trial or proceeding, a trial court must consider N.D. Sup. Ct. Admin. R. 6(B) and 7(B).

Rule 21 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules. In addition, reference to transfers between municipalities was removed from the rule.

Rule 21 contemplates that all transfers ~~shall~~ be made from one court to a

corresponding court of the same grade and classification.

Subdivisions (a), (b) and ~~(g)~~ (f)were amended, effective March 1, 1990. The amendments are technical in nature and no substantive change is intended.

Rule 21 is not designed for cases in which it is claimed that the judge is biased, as there are statutory remedies enabling a party to disqualify a judge. See N.D.C.C. § 29-15-21.

Paragraph (d)(1) on file transfers and former subdivision (e) on transfer of records were deleted, effective March 1, 2016.

Subdivision ~~(g)~~ (f) was added to incorporate the provisions of N.D.C.C. § 29-15-05 (Disposition of defendant upon removal).

SOURCES: Joint Procedure Committee Minutes of January 29-30, 2015, pages 22-23; April 28-29, 2005, page 3; January 23-24, 2005, page 17; September 23-24, 1999, pages 13-15; September 24-25, 1998, pages 16-17; April 20, 1989, page 4; December 3, 1987, page 15; September 18-19, 1980, pages 15-18; April 24-26, 1973, page 11; October 17-20, 1972, pages 5- 11; September 17-18, 1970, pages 7-9; September 25-27, 1968, pages 9-11; Fed.R.Crim.P. 21.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-01-33, 29-15-01, 29-15-02, 29-15-03, 29-15-04, 29-15-05, 29-15-06, 29-15-07, 29-15-08, 29-15-09, 29-15-10, 29-15-11, 29-15-12, 29-15-20, 33-12-14, 40-18-21.

CONSIDERED: N.D.C.C. §§ 27-05-22, 29-15-21, 33-03-11.

CROSS REFERENCE: N.D. Sup. Ct. Admin. R. 6 (Judicial Districts); N.D. Sup. Ct. Admin. R. 7 (Designation of Judgeships and Chambers with Assignments).

RULE 34. ARRESTING JUDGMENT

(a) In General. On the defendant's motion or on its own, the court must arrest judgment if the court does not have jurisdiction of the charged offense~~:~~

~~(1) the indictment, information, or complaint does not charge an offense; or~~

~~(2) the court does not have jurisdiction of the charged offense~~.

(b) Time to File. The defendant must move to arrest judgment within 14 days after verdict or finding of guilty, or after a plea of guilty.

EXPLANATORY NOTE

Rule 34 was amended, effective March 1, 2006; March 1, 2007; March 1, 2011; March 1, 2016.

Rule 34 is an adaptation of Fed.R.Crim.P. 34 ~~and differs only to the extent that it includes the complaint as a charging document.~~ The rule was amended, effective March 1, 2016, ~~recognizes two grounds~~ to recognize only one ground for a motion in arrest of judgment: ~~(1) that the indictment, information, or complaint does not charge an offense; and (2)~~ that the court is without jurisdiction of the offense charged. ~~These grounds are among the nonwaivable defenses referred to in Rule 12(b)(2)~~. This change was based on the December 2014 amendment to Fed.R.Crim.P. 34.

An attack on the sufficiency of the evidence should be by motion for acquittal under Rule 29; a claim of errors at the trial should be made by motion for

a new trial under Rule 33; and defects of form in the indictment, information, or complaint must be raised before trial by motion under Rule 12.

A motion for arrest of judgment should ordinarily be made in writing and served upon the parties and filed. The grounds for the motion are stated in the language of the rule.

Subdivision (b) was amended, effective March 1, 2006, to increase to the time to file a motion to arrest judgment from seven to ten days. Subdivision (b) was amended, effective March 1, 2007, to eliminate the requirement that the trial court decide a motion for extension of time within ten days. Motions for extension of time must be made under Rule 45(b).

Subdivision (b) was amended, effective March 1, 2011, to increase to the time to file a motion to arrest judgment from 10 to 14 days.

Rule 34 was amended, effective March 1, 2006, in response to the December 1, 2002, revision of the Federal Rules of Criminal Procedure. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, page 26; April 29-30, 2010, page 20; January 26, 2006, page 10; January 27-28, 2005, page 31; April 24-26, 1973, page 13; December 11-15, 1972, pages 19-20; September 26-27, 1968, pages 17-18; Fed.R.Crim.P. 34.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. §§ 29-25-01, 29-25-02, 29-25-03, 29-25-04.

CONSIDERED: N.D.C.C. §§ 29-25-05, 29-25-06.

CROSS REFERENCE: N.D.R.Crim.P. 12 (Pleadings and Pretrial Motions); N.D.R.Crim.P. 29 (Motion for a Judgment of Acquittal); N.D.R.Crim.P. 33 (New Trial); N.D.R.Crim.P. 45 (Computing and Extending Time); N.D.R.Crim.P. 47 (Motions); N.D.R.Crim.P. 49 (Serving and Filing Documents).

RULE 801. DEFINITIONS THAT APPLY TO THIS ARTICLE; EXCLUSIONS FROM HEARSAY

The following definitions apply under this Article:

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and, if offered in a criminal proceeding, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently

fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

EXPLANATORY NOTE

Rule 801 was amended, effective July 1, 1981; March 1, 1990; March 1, 2014; March 1, 2016.

The definition of hearsay contained in this rule is dependent, in part, upon the definition of a statement contained in subdivision (a). In this regard, it should be noted that nonverbal conduct, to be a statement, and thus hearsay, must be intended by the party to be an assertion. Non assertive conduct is not a statement and therefore not objectionable as hearsay. Thus, pointing out a suspect in response to the question, "Who did it?" is assertive conduct and, if it otherwise falls within the definition, hearsay. Conversely, the act of opening an umbrella is not intended to be assertive, is not hearsay, and may be offered as substantive evidence that rain was falling at a certain place and time.

Hearsay is defined in subdivision (c) as a statement made by a declarant, other than one made at the trial or hearing offered to prove the truth of the matter asserted. This definition is of two distinct parts. The first is that the statement is one not made at the trial in which it is offered.

The second is that the statement must be offered to prove the truth of its content, i.e., the matter asserted in the statement. If offered for other purposes, e.g., to show that the declarant in fact made a statement any statement and, thus, was conscious at a particular time, the statement is not objectionable as hearsay. The reason for this requirement is that it is only when a statement is offered to prove the truth of the matter asserted that there is a lack of the safeguards used to insure credibility of the declarant. It is this lack of an oath and cross-examination of the declarant that warrants the exclusion of evidence as hearsay.

Subdivision (d) exempts from the hearsay definition, and allows as substantive evidence, two types of statements which are technically hearsay. The reason for the exemptions are that the dangers normally attendant to receiving hearsay statements are at least partially removed in the exempted situations. In paragraph (d)(1), the opportunity to cross-examine the declarant is present. In paragraph (d)(2), the nature of the adversary system strengthens the reliability of a statement by an opposing party.

Paragraph (d)(1) follows Rule 801, Uniform Rules of Evidence, allowing prior inconsistent statements always to be used as substantive evidence in civil cases and, if the prior statement was made under oath in criminal cases. This varies from Rule 801 of the Federal Rules of Evidence, which requires that the prior statement be made under oath in all cases. See the discussion of Rule 801, Federal Rules of Evidence, in State v. Igoe, 206 N.W.2d 291 (N.D. 1973).

Subparagraph (d)(1)(B) was amended, effective March 1, 2016, to allow use of a prior consistent statement to rehabilitate the declarant's credibility as a witness when attacked on another ground. The change was based on the 2014 amendment to Fed.R.Ev. 801.

Subparagraph (d)(1)(C) was added [effective July 1, 1981] to comply with the federal rule. This provision was omitted from the original promulgation of the Federal Rules of Evidence but was added soon thereafter.

Rule 801 was amended, effective March 1, 1990. The amendment is

technical in nature and no substantive change is intended.

Rule 801 was amended, effective March 1, 2014, in response to the December 1, 2011, revision of the Federal Rules of Evidence. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules. There is no intent to change any result in any ruling on evidence admissibility.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, page 27; September 27, 2012, page 21; March 24-25, 1988, pages 15-16; December 3, 1987, pages 6-7 and 15; May 21-22, 1987, pages 6-7; February 19-20, 1987, pages 10-17;September 18-19, 1980, pages 18-20; March 27-28, 1980, pages 11-12; January 29, 1976, page 18; October 1, 1975, page 6; Fed.R.Ev. 801; Rule 801, SBAND proposal.

RULE 803. EXCEPTIONS TO THE RULE AGAINST HEARSAY REGARDLESS OF WHETHER THE DECLARANT IS AVAILABLE AS A WITNESS

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived the event or condition.

(2) Excited utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that the event or condition caused.

(3) Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement made for medical diagnosis or treatment. A statement that:

(A) is made for, and is reasonably pertinent to, medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their

inception; or their general cause.

(5) Recorded recollection. A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by, or from information transmitted by, someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12); and

(E) ~~neither~~ the opponent does not show that the source of information ~~nor~~ or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a record of a regularly conducted activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) ~~neither~~ the opponent does not show that the possible source of the information ~~nor~~ or other circumstances indicate a lack of trustworthiness.

(8) Public records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but, in a criminal case, not including a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) ~~neither~~ the opponent does not show that the source of information ~~nor~~ or other circumstances indicate a lack of trustworthiness.

Before offering factual findings in evidence under this exception, a party must provide the opposing party a copy of the findings, or the portion that relates to the controversy. The opposing party may cross-examine under oath the person who prepared a record, statement or factual findings submitted under this exception, or any person furnishing information recorded in the record, statement or findings. If the person is unavailable for cross-examination, the record,

statement, or findings may be admitted under this exception unless the court decides the opposing party would be prejudiced unfairly.

(9) Public records of vital statistics. A record of a birth, fetal death, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) Absence of a public record. Testimony, or a certification under Rule 902, that a diligent search failed to disclose a public record or statement if:

(A) the testimony or certification is admitted to prove that:

~~(A)~~ (i) the record or statement does not exist; or

~~(B)~~ (ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind: and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice, unless the court sets a different time for the notice or the objection.

(11) Records of religious organizations concerning personal or family history. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of marriage, baptism, and similar ceremonies. A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by

law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) Family records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) Records of documents that affect an interest in property. The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) Statements in documents that affect an interest in property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose, unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. A statement in a document that is at

least 20 years old and whose authenticity is established.

(17) Market reports and similar commercial publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in learned treatises, periodicals, or pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation concerning personal or family history. A reputation among a person's family by blood, adoption, or marriage, or among a person's associates or in the community, concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) Reputation concerning boundaries or general history. A reputation in a community, arising before the controversy, concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation concerning character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a previous conviction. Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal or post-conviction proceeding may be shown but does not affect admissibility.

(23) Judgments involving personal, family, or general history, or a boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) Child's statement about sexual abuse. A statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child if:

(A) the trial court finds, after hearing on notice in advance of the trial of the sexual abuse issue, that the time, content, and circumstances of the statement

provide sufficient guarantees of trustworthiness; and

(B) the child either:

(i) testifies at the trial; or

(ii) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

(25) [Other exceptions.] [Transferred to Rule 807].

EXPLANATORY NOTE

Rule 803 was amended, effective March 1, 1990; March 1, 2000; March 1, 2014; March 1, 2016.

Rule 803 is based on Fed.R.Ev. 803.

~~Paragraph (6)(D) was amended, effective March 1, 2014, to allow the foundation for admission of a record of a regularly conducted activity to be established by a certification that complies with Rule 902 (11) or (12).~~

The last two sentences in paragraph (8) were derived from N.D.C.C. §§ 31-9-11 and 31-09-12, which were superseded by these rules.

The excepted situations listed in this rule traditionally have been deemed to have circumstantial guarantees of trustworthiness which render hearsay evidence reliable and admissible, even though the declarant may be available to testify.

Paragraph (22) provides in certain instances, evidence of a previous final judgment comes within a hearsay exception. The paragraph differs from its federal counterpart. The federal exception for pleas of nolo contendere has been deleted as

that plea is not used in the state courts of North Dakota. The paragraph also was changed by adding post-conviction proceedings, like appeals, do not affect the admissibility of previous convictions.

It should also be noted these exceptions remove only the hearsay objection to evidence. Evidence of a past conviction sought to be introduced under paragraph (22) must also meet the requirements of Rule 609.

Rule 803 was amended, effective March 1, 1990, to provide a hearsay exception for a child victim of sexual abuse and is modeled in part after the Colorado and Utah statutes on a child victim's out-of-court statement regarding sexual abuse. Former paragraph (24) was renumbered to paragraph (25) and all other amendments are technical in nature and no substantive change is intended.

Rule 803 was amended, effective March 1, 2000, to follow the December 1, 1997, federal amendment. The contents of Rule 803(25) are transferred to new Rule 807.

Rule 803 was amended, effective March 1, 2014, in response to the December 1, 2011, revision of the Federal Rules of Evidence. The language and organization of the rule were changed to make the rule more easily understood and to make style and terminology consistent throughout the rules.

Subparagraph (6)(D) was amended, effective March 1, 2014, to allow the foundation for admission of a record of a regularly conducted activity to be established by a certification that complies with Rule 902 (11) or (12).

Paragraphs (6), (7), and (8) were amended, effective March 1, 2016, to specifically place the burden of showing untrustworthiness of a record on the opponent of admission. The change is based on the December 2014 amendment to Fed.R.Ev. 803.

Paragraph (10) was amended, effective March 1, 2016, to follow the December 2013 amendments to Fed.R.Crim.P. 803. The amendment is intended to require a "notice and demand" procedure in criminal cases if the prosecution intends to introduce evidence by certificate.

Sources: Supreme Court Conference Minutes of October 23 and October 25, 1989 [Rule 803 (24)]. Joint Procedure Committee Minutes of April 23-24, 2015, pages 27-28; January 29-30, 2015, pages 23-24; April 25-26, 2013, pages 18-21; January 31-February, 2013, pages 23-24; September 27, 2012, page 22; Rule 803(25), September 24-25, 1998, page 4; April 30-May 1, 1998, page 16; Rule 803(24), April 20, 1989, pages 6-8; March 24, 1988, pages 2-6 and 15-16; December 3, 1987, pages 6-7; May 21, 1987, pages 6-7; Rule 803(5), (18), (19), (21), (25), December 3, 1987, pages 15-16; Rule 803, June 3, 1976, page 15; Rule 803(1), (2), January 29, 1976, page 19; Rule 803(3), January 29, 1976, page 19; October 1, 1975, page 7; Rule 803(4), (5), January 29, 1976, page 19; Rule 803(6), January 29, 1976, page 20; Rule 803(7), January 29, 1976, page 20; October 1, 1975, page 7; Rule 803(8), January 29, 1976, page 21; October 11, 1975, page 7; Rule 803(9), (10), (12), (13), (14), (15), (16), (17), (18), (20), (21), January 29,

1976, pages 21-23; Rule 803(11), June 3, 1976, page 15; January 29, 1976, page 22; Rule 803(19), June 3, 1976, page 15; January 29, 1976, page 23; Rule 803(22), January 29, 1976, page 23, 24; October 1, 1975, page 7; Rule 803(23), January 29, 1976, page 24; Rule 803(24), April 8, 1976, pages 8a, 9; January 29, 1976, page 24. Fed.R.Ev. 803; Rule 803, SBAND proposal.

Statutes Affected:

Superseded: N.D.C.C. §§ 31-09-11, 31-09-12.

Considered: N.D.C.C. §§ 2-06-05, 4-22-15, 6-03-32, 6-08-10, 10-04-19, 10-15-08, 11-11-38, 11-13-08, 11-15-16, 11-18-09, 11-20-01, 11-20-05, 11-20-13, 14-03-24, 19-01-10, 19-03.1-37, 19-20.1-17, 23-24-04, 24-07-15, 28-23-12, 31-04-05, 31-04-06, 31-08-01, 31-08-02, 31-08-05, 32-19-26, 32-25-03, 32-25-04, 35-21-05, 35-22-11, 35-22-16, 39-20-07, 40-01-10, 40-02-12, 40-04-06, 40-11-08, 40-16-09, 41-03-66, 42-02-07, 43-01-21, 43-01-22, 43-06-07, 43-07-13, 43-10-07, 43-11-10, 43-13-12, 43-17-11, 43-19.1-10, 43-19.1-20, 43-28-08, 43-28-16, 43-29-04, 43-36-17, 47-19-06, 47-19-12, 47-19-23, 47-19-24, 47-19-45, 49-01-14, 49-06-14, 49-19-16, 57-38-46, 61-03-06, 61-04-25, 61-05-19, 61-16-06.

Cross Reference: N.D.R.Ev. 609 (Impeachment by Evidence of a Criminal Conviction; N.D.R.Ev. 807 (Residual Exception); N.D.R.Crim.P. 11 (Pleas); N.D.R.Crim.P 12 (Pleadings and Pretrial Motions).

RULE 2.2 FACSIMILE TRANSMISSION [REPEALED]

~~EXPLANATORY NOTE~~

Rule 2.2 was repealed, effective March 1, 2009. Rule 3.5 addresses electronic filing in the district courts. ~~, to eliminate the separate rule for filing by facsimile transmission. Filing by facsimile transmission is a form of electronic filing and is governed by the Supreme Court's rules and orders on the filing of electronic documents.~~

~~SOURCES: Joint Procedure Committee Minutes of April 24-25, 2008, pages 12-16; April 25-26, 2002, pages 14-15; September 28-29, 2000, pages 7-8; January 26-27, 1995, pages 2-3; September 23-24, 1993, pages 17-19; April 29-30, 1993, pages 11-16; November 7-8, 1991, page 3; October 25-26, 1990, pages 9-10.~~

~~CROSS REFERENCES: N.D.R.App.P. 25(a) (Filing and Service); N.D. Sup. Ct. Admin. Order 14 (Electronic Filing in the Supreme Court); N.D. Sup. Ct. Admin. Order 16 (Electronic Filing in the District Courts).~~

RULE 3.2 MOTIONS

(a) Submission of Motion.

(1) Notice. Notice must be served and filed with a motion. The notice must indicate the time of oral argument, or that the motion will be decided on briefs unless oral argument is timely requested.

(2) Briefs. Upon serving and filing a motion, the moving party must serve and file a brief and other supporting papers and the opposing party must have 14 days after service of a brief within which to serve and file an answer brief and other supporting papers. The moving party may serve and file a reply brief within seven days after service of the answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is ~~deemed~~ considered submitted to the court unless counsel for any party requests oral argument on the motion.

(3) Requesting oral argument. If any party who has timely served and filed a brief requests oral argument, the request must be granted. A timely request for oral argument must be granted even if the moving party has previously served notice indicating that the motion is to be decided on briefs. The party requesting oral argument must secure a time for the argument and serve notice upon all other parties. Requests for oral argument or the taking of ~~testimony~~ evidence must be made not later than seven days after expiration of the time for filing the answer brief. If the party requesting oral argument fails within 14 days of the request to

secure a time for the argument, the request is waived and the matter is considered submitted for decision on the briefs. If an evidentiary hearing is requested in a civil action, notice must be served at least 21 days before the time specified for the hearing.

(b) Court hearing. The court may hear oral argument on any motion. If permitted by the court, a hearing may be held using ~~electronic means, including telephonic conference or interactive television~~ contemporaneous audio or audiovisual transmission by reliable electronic means. After reviewing the parties' submissions, the court may require oral argument and may allow or require ~~testimony~~ evidence on a motion.

(c) Failure to File Briefs. Failure to file a brief by the moving party may be deemed an admission that, in the opinion of party or counsel, the motion is without merit. Failure to file a brief by the opposing party may be deemed an admission that, in the opinion of party or counsel, the motion is meritorious. Even if an answer brief is not filed, the moving party must still demonstrate to the court that it is entitled to the relief requested.

(d) Extension of Time. Extensions of time for filing briefs and other supporting papers, or for continuance of the hearing on a motion, may be granted only by written order of court.All requests for extension of time or continuance, whether written or oral, must be accompanied by an appropriate order form.

(e) Time Limit for Filing Motion. Except for good cause shown, a motion

must be filed in such time that it may be heard not later than the date set for pretrial of the case.

(f) Application of Rule.

(1) Conflicting rules. This rule does not apply to the extent it conflicts with another rule adopted by the Supreme Court.

(2) Probate code. This rule applies to formal proceedings under Uniform Probate Code.

EXPLANATORY NOTE

Rule 3.2 was amended, effective September 1, 1983; March 1, 1986; January 1, 1988; March 1, 1990; January 1, 1995; March 1, 1997; March 1, 2002; March 1, 2005; March 1, 2007; March 1, 2011; March 1, 2016.

Subdivision (a) was amended, effective March 1, 1990, to provide that the request for oral argument on the motion must be granted when the party requesting oral argument has timely served and filed a brief.

Subdivision (a) was amended, effective January 1, 1995, to provide that a written motion must be noticed, and that the notice must indicate that oral argument has been requested or that the motion will be decided on briefs unless oral argument is requested. In addition, the amendment shortened the time between the date a motion is filed and the date a motion may be heard by eliminating the five-day period within which the moving party's brief could be filed.

Although the rule contemplates filing a brief with every motion, what

constitutes a brief should be liberally construed.

Paragraph (a)(2) was amended, effective March 1, 2011, to increase the time for an opposing party to serve and file an answer brief from 10 to 14 days after service of the moving party's brief. The time for a moving party to serve and file a reply brief was increased from five to seven days after expiration of the time for filing the answer brief. Paragraph (a)(3) was amended to increase the time to request oral argument from five to seven days after expiration of the time for filing the answer brief.

Paragraph (a)(3) was amended, effective March 1, 2016, to require a party requesting oral argument to secure a time for the argument within 14 days of the request. Otherwise, the request will be waived and the matter considered on the briefs. In addition, language was added to the rule requiring 21 days notice to be given if an evidentiary hearing is requested in a civil action.

Subdivision (b) was amended, effective March 1, 2007, to expand hearing options to include hearing by interactive television and to add a requirement that the court review the parties' submissions before it orders oral argument or testimony.

Subdivision (b) was amended, March 1, 2016, to allow hearings to be conducted using contemporaneous audio or audiovisual transmission by reliable electronic means. N.D. Sup. Ct. Admin. R. 52 governs electronic means hearings.

Paragraph (f)(1) was added, effective March 1, 1997, to clarify that, in the

case of a conflict between this rule and any other supreme court rule, the other rule will govern. For example, N.D.R.Civ.P. 56 allows parties 30 days to respond to a summary judgment motion, which conflicts with the 14 day response period specified in subdivision (a) of this rule. Under subdivision (e), the N.D.R.Civ.P. 56 response period would prevail.

Paragraph (f)(2) was added, effective March 1, 2007, to specify that this rule applies to formal proceedings under the Uniform Probate Code. N.D.C.C. § 30.1-01-06(19) defines "formal proceedings" as "proceedings conducted before a judge with notice to interested persons."

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, page 6; January 29-30, 2015, pages 19-21; April 29-30, 2010, page 21; April 27-28, 2006, pages 7-9, 17-19; January 26, 2006, pages 12-13; April 29-20, 2004, pages 25-26; September 28-29, 2000, page 13; April 25, 1996, pages 8-11; January 25-6, 1996, pages 10-16; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 13-16; April 29-30, 1993, pages 20-22; April 20, 1989, pages 10-15; March 24-25, 1988, pages 7-10 and 13-15; December 3, 1987, pages 4-5; February 19-20, 1987, pages 21-22; June 22, 1984, page 30; April 26, 1984, pages 17-19.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 30.1.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings

and Other Papers); N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 7 (Pleadings Allowed--Form of Motions); N.D.R.Civ.P. 56 (Summary Judgment); N.D.R.Crim.P. 45 (Time); N.D.R.Crim.P. 47 (Motions); N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.App.P. 27 (Motions); N.D.R.App.P. 34 (Oral Argument); N.D. Sup. Ct. Admin. R. 52 (~~Interactive Television~~ Contemporaneous Transmission by Reliable Electronic Means).

RULE 3.5. ELECTRONIC FILING IN DISTRICT COURTS

(a) Electronic filing.

(1) Documents filed electronically in the district courts must be submitted through the Odyssey® electronic filing system.

(2) All documents filed after the initiating pleadings in criminal and juvenile cases must be filed electronically ~~except for documents filed by self-represented litigants and prisoners~~. ~~After June 1, 2013, initiating pleadings~~ All documents in civil, non-juvenile, cases must be filed electronically ~~in civil, non-juvenile, cases~~. A party who files a complaint in a civil case must electronically serve notice of filing on the other parties or their attorneys.

(3) Self-represented litigants and prisoners are exempt from the electronic filing requirement and may file paper documents in person, by mail, or by third party commercial carrier. Self-represented litigants and prisoners who wish to file documents by electronic means must use the Odyssey® system.

(4) On a showing of exceptional circumstances in a particular case, anyone may be granted leave of court to file paper documents. Original wills, codicils and other documents of independent legal significance may be filed as paper documents. Colored or shaded documents may be filed as paper documents if necessary to ensure legibility.

~~(4)~~ (5) A document filed electronically has the same legal effect as a paper

document.

~~(5)~~ (6) Any signature on a document filed electronically is considered that of the officer of the court or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court must strike the filing.

(7) A party who electronically files a proposed order must identify the filing party in the Odyssey® comments field.

(b) Filing formats.

(1) Approved formats for documents filed electronically are WordPerfect (.wpd), Tagged Image File (.tif), Portable Document File (.pdf) and ASCII (.txt).

(2) All paragraphs must be numbered in documents filed electronically. Reference to material in such documents must be to paragraph number, not page number. Paragraph numbering is not required in exhibits, documents prepared before the action was commenced, or in documents not prepared by the parties or court.

(c) Time of filing.

(1) A document in compliance with the rules and submitted electronically to the district court clerk by 11:59 p.m. local time is considered filed on the date submitted. A document electronically signed by the court is considered filed when the e-signature is affixed.

(2) After reviewing an electronically filed document, the district court clerk

must inform the filer, through an e-mail generated by the Odyssey® system, whether the document has been accepted or rejected.

(3) If a document submitted for electronic filing is rejected, the time for filing is tolled from the time of submission to the time the e-mail generated by the Odyssey® system notifying the filer of rejection is sent. The document will be considered timely filed if resubmitted within three days after the notice of rejection. A party seeking to take advantage of this tolling provision must file and serve a separate document providing notice that the rejected document is being resubmitted under N.D.R.Ct. 3.5(c)(3).

(4) Any required filing fee must be paid by credit card or debit card at the time the document is filed.

(d) Confidentiality. In documents prepared for filing with the court, information that would otherwise be included in the document but required by N.D.R.Ct. 3.4 to be redacted in court documents must be separately filed in a reference sheet (confidential information form, see appendix) and may be included in those documents only by reference. Any document not complying with this order is subject to N.D.R.Ct. 3.4(g).

(e) Electronic service.

(1) All documents filed electronically after the initiating pleadings must be served electronically through the Odyssey® system except for documents served on or by self-represented litigants and prisoners. On a showing of exceptional

circumstances in a particular case, anyone may be granted leave of court to serve paper documents or to be exempt from receiving electronic service. Attorneys who are required by rule or statute to serve documents on their own clients may serve paper documents.

(2) Except as provided in N.D.R.Ct. 3.5(e)(4), electronic service of a document is not effective if the party making service learns through any means that the document did not reach the person to be served.

(3) All attorneys must provide at least one e-mail address to the State Board of Law Examiners for accepting electronic service. Designated email service addresses will be posted on the North Dakota Supreme Court website.

(4) For purposes of computation of time, any document electronically served must be treated as if it were mailed on the date of transmission. If an attorney who is not exempt from electronic service fails to provide an e-mail address for service or fails to accept or open electronically served e-mail, the server's attempt at electronic service constitutes delivery. Service made impossible due to an attorney's failure to provide an e-mail address must be shown by an affidavit or certificate of attempted service.

(f) Technical issues; Relief. On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

EXPLANATORY NOTE

Adopted effective January 15, 2013; amended effective April 15, 2013; June 1, 2013; June 1, 2015; March 1, 2016.

Rule 3.5 was originally adopted as N.D.Sup.Ct.Admin.O. 16 on March 1, 2006. Order 16 was later amended, effective March 1, 2008; March 1, 2009; August 1, 2010; March 1, 2011; and July 1, 2012.

Order 16 was amended, effective July 1, 2012, to incorporate the provisions of the Order 16 Addendum (Filing in the District Court where Odyssey® Electronic Filing is Available) and N.D.Sup.Ct.Admin.O. 18 (Filing in Counties Using the Odyssey® Case Management System). The Order 16 Addendum and Order 18 were repealed, effective July 1, 2012.

In an appeal from an agency determination under N.D.C.C. § 28-32-42, the notice of appeal must be served on all the entities listed in the statute, some of whom may not be subject to electronic service through the Odyssey® system.

Subdivision (a) was amended, effective March 1, 2016, to clarify that self-represented litigants and prisoners who wish to file documents electronically must use the Odyssey® system and to require a party filing a proposed order to identify the party in the Odyssey® comments field.

Paragraph (b)(1) was amended, effective June 1, 2015, to remove Word documents from the list of approved formats for electronic filing in the Odyssey® system. If a court requests that parties submit editable documents such as proposed findings or orders, Word or other editable format documents still may be

e-mailed to the court for that purpose but only after e-filing the documents in Odyssey in an approved format.

Subdivision (c) was amended, effective March 1, 2016, to clarify that a document electronically signed by the court is considered filed when the e-signature is affixed.

Sources: Joint Procedure Committee Minutes of April 23-24, 2015, pages 2-3; January 29-30, 2015, pages 13-14; April 25-26, 2013, pages 3-16; January 31-February 1, 2013, pages 2-5, 15-18; September 27, 2012, pages 14-21; April 29-30, 2010, page 21; April 24-25, 2008, pages 12-16; October 11-12, 2007, pages 3-5; April 26-27, 2007, pages 16-18; January 25, 2007, pages 15-16; Sept 23-24, 2004, pages 18-27.

Statutes Affected:

Considered: N.D.C.C. § 28-32-42.

Cross References: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court); N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction; Process; Service); N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Documents); N.D. Admission to Practice R. 1 (General Requirements for Admission).

RULE 5.4 PETITION FOR RESTORATION OF FIREARMS RIGHTS

(a) State Felony Conviction. An individual who is prohibited from possessing a firearm due to a felony conviction in this state may submit a petition for restoration of firearms rights under N.D.C.C. § 62.1-02-01.1 to the district court in the county where the offense occurred. The petition may be submitted in the existing criminal case for the offense.

(b) Out-of-State or Federal Conviction. An individual who is prohibited from possessing a firearm due to a felony conviction in another state or in a federal court may submit a petition for restoration of firearms rights under N.D.C.C. § 62.1-02-01.1 to the district court in the county where the petitioner resides. The petition must be submitted as part of a new civil case.

(c) Mental Disability. An individual who is prohibited from possessing a firearm due to a mental disability may submit a petition for restoration of firearms rights under N.D.C.C. § 62.1-02-01.2(3) to the district court that issued the finding of disability or the district court in the county where the petitioner resides. The petition may be submitted into the existing mental disability case when directed to the district court that made the finding of disability or submitted as part of a new civil case when made in the county where the petitioner resides.

EXPLANATORY NOTE

Rule 5.4 was adopted, effective March 1, 2016.

SOURCES: Joint Procedure Committee Minutes of April 23-24, 2015, pages 5-6; January 29-30, 2015, pages 14-15.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 62.1-02.

RULE 41. ACCESS TO COURT RECORDS

Section 1. Purpose.

The purpose of this rule is to provide a comprehensive framework for public access to court records. Every member of the public will have access to court records as provided in this rule.

Section 2. Definitions.

(a) "Court record," regardless of the form, includes:

(1) any document, information, or other thing that is collected, received, or maintained by court personnel in connection with a judicial proceeding;

(2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by court personnel that is related to a judicial proceeding; and

(3) information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) "Court record" does not include:

(1) other records maintained by the public official who also serves as clerk of court;

(2) information gathered, maintained or stored by a governmental agency or

other entity to which the court has access but which is not part of the court record as defined in this rule; and

(3) a record that has been disposed of under court records management rules.

(c) "Public access" means that the public may inspect and obtain a copy of the information in a court record.

(d) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

(e) "Bulk distribution" means the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

(f) "Compiled information" means information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(g) "Electronic form" means information in a court record that exists as:

(1) electronic representations of text or graphic documents;

(2) an electronic image, including a video image, of a document, exhibit or other thing;

(3) data in the fields or files of an electronic database; or

(4) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

Section 3. General Access Rule.

(a) Public Access to Court Records.

(1) ~~Information in the court record is~~ Court records are accessible to the public except as prohibited by this rule.

(2) There must be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication may not disclose the nature of the information protected.

(3) A court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided for in this rule, nor provide greater access than that provided for in this rule.

(b) When Court Records May Be Accessed.

(1) Court records in a court facility must be available for public access during normal business hours. Court records in electronic form to which the court allows remote access will be available for access subject to technical systems availability.

(2) Upon receiving a request for access to ~~information~~ a court record, the clerk of court must respond as promptly as practical. If a request cannot be granted promptly, or at all, an explanation must be given to the requestor as soon as possible. The requestor has a right to at least the following information: the nature of any problem preventing access and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation must be in

writing if desired by the requestor.

(3) The clerk of court is not required to search within a court record for specific information that may be sought by a requestor.

(c) Access to Court Records Filed Before March 1, 2009. Court records filed before the adoption of N.D.R.Ct. 3.4 may contain protected information listed under N.D.R.Ct. 3.4(a). This rule does not require the review and redaction of protected information from a court record that was filed before the adoption of N.D.R.Ct. 3.4 on March 1, 2009.

(d) Fees for Access.The court may charge a fee for access to court records in electronic form, for remote access, for bulk distribution or for compiled information. To the extent that public access to information is provided exclusively through a vendor, the court will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

Section 4. Methods of Access to Court Records.

(a) Access to Court Records at Court Facility.

(1) Request for Access. Any person desiring to inspect, examine, or copy a court record must make an oral or written request to the clerk of court. If the request is oral, the clerk may require a written request if the clerk determines that the disclosure of the record is questionable or the request is so involved or lengthy as to need further definition. The request must clearly identify the record requested so that the clerk can locate the record without doing extensive research.

Continuing requests for a document not yet in existence may not be considered.

(2) Response to Request. The clerk of court is not required to allow access to more than ten files per day per requestor but may do so in the exercise of the clerk's discretion if the access will not disrupt the clerk's primary function. If the request for access and inspection is granted, the clerk may set reasonable time and manner of inspection requirements that ensure timely access while protecting the integrity of the records and preserving the affected office from undue disruption. The inspection area must be within full view of court personnel whenever possible. The person inspecting the records may not leave the court facility until the records are returned and examined for completeness.

(3) Response by Court. If a clerk of court determines there is a question about whether a record may be disclosed, or if a written request is made under Section 6(b) for a ruling by the court after the clerk denies or grants an access request, the clerk must refer the request to the court for determination. The court must use the standards listed in Section 6 to determine whether to grant or deny the access request.

(b) Remote Access to Court Records. The following information in court records must be made remotely accessible to the public if it exists in electronic form, unless public access is restricted under this rule:

(1) litigant/party indexes to cases filed with the court;

(2) listings of new case filings, including the names of the parties;

(3) register of actions showing what documents have been filed in a case;

(4) calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing; and

(5) reports specifically developed for electronic transfer approved by the state court administrator and reports generated in the normal course of business, if the report does not contain information that is excluded from public access under Section 5 or 6.

(c) Requests for Bulk Distribution of Court Records.

(1) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under Section 3(a).

(2) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes when the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information under this subsection the requestor must comply with the provisions of Section 6.

(3) A court may allow a party to a bulk distribution agreement access to birth date, street address, and social security number information if the party certifies that it will use the data for legitimate purposes as permitted by law.

(d) Access to Compiled Information From Court Records.

(1) Any member of the public may request compiled information that

consists solely of information that is publicly accessible and that is not already in an existing report. The court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the court, that the resources are available to compile the information and that it is an appropriate use of public resources. The court may delegate to its staff or the clerk of court the authority to make the initial determination to provide compiled information.

(2) Requesting compiled restricted information.

(A) Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.

(B) The request must:

(i) identify what information is sought,

(ii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and

(iii) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

(C) The court may grant the request and compile the information if it determines that doing so meets criteria established by the court and is consistent with the purposes of this rule, the resources are available to compile the

information, and that it is an appropriate use of public resources.

(D) If the request is granted, the court may require the requestor to sign a declaration that:

(i) the data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,

(ii) the information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and

(iii) there will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

Section 5. Court Records Excluded From Public Access.

The following information in a court record is not accessible to the public:

(a) information that is not accessible to the public under federal law;

(b) information that is not accessible to the public under state law, court rule, case law or court order, including:

(1) affidavits or sworn testimony and records of proceedings in support of the issuance of a search or arrest warrant pending the return of the warrant;

(2) information in a complaint and associated arrest or search warrant to the extent confidentiality is ordered by the court under N.D.C.C. §§ 29-05-32 or 29-

9-22;

(3) documents filed with the court for in-camera examination pending disclosure;

(4) case information and documents in Child Relinquishment to Identified Adoptive Parent cases brought under N.D.C.C. ch. 14-15.1;

(5) domestic violence protection order files and disorderly conduct restraining order files when the restraining order is sought due to domestic violence, except for orders of the court;

(6) documents in domestic violence protection order and disorderly conduct restraining order cases in which the initial petition was dismissed summarily by the court without a contested hearing;

(7) names of qualified or summoned jurors and contents of jury qualification forms if disclosure is prohibited or restricted by order of the court;

(8) records of voir dire of jurors, unless disclosure is permitted by court order or rule;

(9) records of deferred impositions of sentences resulting in dismissal;

(10) unless exempted from redaction by N.D.R.Ct. 3.4(c), protected information:

(A) except for the last four digits, social security numbers, taxpayer identification numbers, and financial account numbers,

(B) except for the year, birth dates, and

(C) except for the initials, the name of an individual known to be a minor, unless the minor is a party, and there is no statute, regulation, or rule mandating nondisclosure;

(11) judge and court personnel work material, including personal calendars, communications from law clerks, bench memoranda, notes, work in progress, draft documents and non-finalized documents;

(12) party, witness and crime victim contact information gathered and recorded by the court for administrative purposes, including telephone numbers and e-mail, street and postal addresses.

(c) This rule does not preclude access to court records by the following persons in the following situations:

(1) federal, state, and local officials, or their agents, examining a court record in the exercise of their official duties and powers.

(2) parties to an action and their attorneys examining the court file of the action, unless restricted by order of the court, but parties and attorneys may not access judge and court personnel work material in the court file.

(d) A member of the public may request the court to allow access to information excluded under Section 5 as provided in Section 6.

Section 6. Requests to Prohibit Public Access to Information in Court Records or to Obtain Access to Restricted Information.

(a) Request to Prohibit Access.

(1) A request to the court to prohibit public access to information in a court record may be made by any party to a case, by the individual about whom information is present in the court record, or on the court's own motion on notice as provided in Section 6(c).

(2) The court must decide whether there are sufficient grounds to overcome the presumption of openness of court records and prohibit access according to applicable constitutional, statutory and case law.

(3) In deciding whether to prohibit access the court must consider that the presumption of openness may only be overcome by an overriding interest. The court must articulate this interest along with specific findings sufficient to allow a reviewing court to determine whether the closure order was properly entered.

(4) The closure of the records must be no broader than necessary to protect the articulated interest. The court must consider reasonable alternatives to closure, such as redaction or partial closure, and the court must make findings adequate to support the closure. The court may not deny access only on the ground that the record contains confidential or closed information.

(5) In restricting access the court must use the least restrictive means that will achieve the purposes of this rule and the needs of the requestor.

(6) If the court concludes, after conducting the balancing analysis and making findings as required by paragraphs (1) through (5), that the interest of justice will be served, it may prohibit public Internet access to an individual

defendant's electronic court record in a criminal case:

(A) if the charges against the defendant are dismissed; or

(B) if the defendant is acquitted. If the court grants a request to prohibit public Internet access to an electronic court record in a criminal case, the search result for the record must display the words "Internet Access Prohibited under N.D.Sup.Ct. Admin.R 41."

(b) Request to Obtain Access.

(1) A request to obtain access to information in a court record to which access is prohibited under Section 4(a), 5 or 6(a) may be made to the court by any member of the public or on the court's own motion on notice as provided in Section 6(c).

(2) In deciding whether to allow access, the court must consider whether there are sufficient grounds to overcome the presumption of openness of court records and continue to prohibit access under applicable constitutional, statutory and case law. In deciding this the court must consider the standards outlined in Section 6(a).

(c) Form of Request.

(1) The request must be made by a written motion to the court.

(2) The requestor shall give notice to all parties in the case.

(3) The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject

of the request. When the request is for access to information to which access was previously prohibited under Section 6(a), the court must provide notice to the individual or entity that requested that access be prohibited.

Section 7. Obligations Of Vendors Providing Information Technology Support To A Court To Maintain Court Records.

(a) If the court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this rule. For purposes of this section, "vendor" includes a state, county or local governmental agency that provides information technology services to a court.

(b) By contract the vendor will be required to notify the court of any requests for compiled information or bulk distribution of information, including the vendor's requests for such information for its own use.

EXPLANATORY NOTE

Adopted on an emergency basis effective October 1, 1996; Amended and adopted effective November 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; March 15, 2009; March 1, 2010; March 1, 2012; March 1, 2015; March 1, 2016. Appendix amended effective August 1, 2001, to reflect the name change of State Bar Board to State Board of Law Examiners.

Section 3(b)(3) was added, effective March 1, 2016, to clarify that the clerk of court is not required to search within a court record for specific information that

may be sought by a requestor.

Section 3(c) was adopted, effective March 1, 2010, to state that protected information may be contained in court records filed before the adoption of N.D.R.Ct. 3.4.

Section 4(c) was amended, effective March 15, 2009, to allow parties who enter into bulk distribution agreements with the courts to have access to birth date, street address, and social security number information upon certifying compliance with laws governing the security of protected information. Such laws include the Federal Fair Credit Reporting Act, the Gramm Leach Bliley Act, the USA Patriot Act and the Driver's Privacy Protection Act.

Section 5(b)(6) was amended, effective March 1, 2015, to clarify that the restriction on public access to documents in domestic violence protection order and disorderly conduct restraining order cases under this paragraph is limited to cases that were dismissed summarily.

Section 5(b)(8) was amended, effective March 15, 2009, to list types of protected information open to the public. The term "financial-account number" in Section 5(b)(8) includes any credit, debit or electronic fund transfer card number, and any other financial account number.

Section 5(b)(8) was amended, effective March 1, 2010, to incorporate the exemptions from redaction contained in N.D.R.Ct. 3.4(b). A document containing protected information that is exempt from redaction under N.D.R.Ct. 3.4(b) is

accessible to the public.

Section 5(b)(12) was added, effective March 1, 2016, to exclude party, witness and crime victim contact information gathered and recorded by the court for administrative purposes from public access.

Section 6(a)(6) was added, effective March 1, 2012, to provide a method for the court to prohibit public Internet access to an electronic case record when charges against a defendant are dismissed or the defendant is acquitted. A request under Section 6(a)(1) is required before the court can act to prohibit access under Section 6(a)(6).

Nothing in this rule or N.D.R.Ct. 3.4 precludes a clerk of court or the electronic case management system from identifying non-confidential records that match a name and date of birth or a name and social security number.

Joint Procedure Committee Minutes of April 23-24, 2015, pages 8-10; April 24-25, 2014, page 27; April 28-29, 2011, pages 9-12; September 23-24, 2010, pages 16-20; September 24-25, 2009, pages 8-9; May 21-22, 2009, pages 28-44; January 29-20, 2009, pages 3-4; September 25, 2008, pages 2-6; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005, pages 6-16; April 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-12. Court Technology Committee Minutes of June 18, 2004; March 19, 2004; September 12, 2003; Conference of Chief

Justices/Conference of State Court Administrators: Guidelines for Public Access to Court Records.

Cross Reference: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made With the Court).