

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20170179

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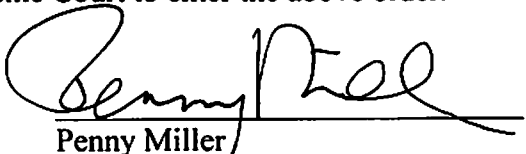
**Proposed Amendments to North Dakota Rule of Appellate Procedure 35.1**

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[¶1] On its own motion, the Court considered amendments to North Dakota Rule of Appellate Procedure 35.1. The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶2] **ORDERED**, that the amendments to North Dakota Rules of Appellate Procedure 35.1 are ADOPTED effective May 10, 2017.

[¶3] The Supreme Court of the State of North Dakota convened the 10th day of May, 2017, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, and the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

  
Penny Miller  
Clerk  
North Dakota Supreme Court

## RULE 35.1 SUMMARY DISPOSITION

**(a) Affirmance by Summary Opinion.** In any case in which the court determines after argument, unless waived, that no reversible error of law appears and if:

- (1) the appeal is frivolous and completely without merit;
- (2) the judgment of the district court is based on findings of fact that are not clearly erroneous;
- (3) the verdict or the judgment is supported by substantial evidence;
- (4) the district court did not abuse its discretion;
- (5) the order of an administrative agency is supported by a preponderance of the evidence;
- (6) the summary judgment, directed verdict, or judgment on the pleadings is supported by the record; or,
- (7) a previous controlling appellate decision is dispositive of the appeal,

the court may affirm by an opinion citing this rule and indicating which one or more of the above criteria apply and citing any previous controlling appellate decision. The opinion may be in the following form: "Affirmed under N.D.R.App.P. 35.1(a)(1), (2), (3), (4), (5), (6), or (7)."

**(b) Reversal by Summary Opinion.** In any case in which the court determines after argument, unless waived, that a previous controlling appellate decision is dispositive of the appeal, the court may reverse by an opinion citing this rule and the controlling appellate decision.

~~**(c) Quarterly Publication.** A list indicating the disposition of all decisions rendered by the court under this rule must be submitted for quarterly publication in the North Western Reporter, except for those decisions the court specially orders to be published in the regular manner.~~

## EXPLANATORY NOTE

Rule 35.1, N.D.R.App.P. , was adopted effective March 1, 1986; and amended, effective March 1, 1998; March 1, 2003; May 10, 2017.

Paragraph (a)(3) was amended, effective March 1, 2003, to allow the court to affirm the judgment of a district court, as well as the verdict of a jury, supported by substantial evidence.

Subdivision (c) was deleted, effective May 10, 2017, to reflect the new practice of publishing summary decisions in the regular manner rather than a list or table as was the prior practice.

**SOURCES:** Supreme Court Conference Minutes of September 10, 1985; Joint Procedure Committee Minutes of September 27-28, 2001, pages 12-13; January 30, 1997, page 13; November 29, 1984, pages 9-11.

**STATUTES AFFECTED:**

**CONSIDERED:** N.D.C.C. § 27-02-23; N. D. Const. Art. VI, § 5.

**CROSS REFERENCES:** N.D.R.App.P. 27 (Motions); N.D.R.App.P. 35 (Scope of Review).