

MEMO

FILED
IN THE OFFICE OF THE
CLERK OF THE SUPREME COURT
SEPTEMBER 27, 2017
STATE OF NORTH DAKOTA

Date: 9/26/17

To: Sally Holewa

From: Cammie Schock, Chair
File & Serve User Group

Re: Mr. Ariston Johnson's Comments on proposed Rule 3.5 / Appendix K amendments

The File & Serve User Group met on September 19th, 2017 to discuss the email from Mr. Ariston Johnson regarding Comments on Proposed Amendments to the North Dakota Rules of Civil Procedure et al., Sup. Ct. No. 20170288.

The Group discussed all of Mr. Johnson's comments and agreed with Mr. Johnson on the following comments:

The proposed amendment to N.D.R.Ct. 3.5(c)(3) is missing a step. Documents must comply with Appendix K. However, there is apparently no requirement that only documents that do not comply with Appendix K be rejected. It is a frequent occurrence that clerks of court and their deputies will reject proper documents due to incorrect or varying interpretations of the E-Filing Rejection Guidelines, which it appears will be supplanted by Appendix K. Moreover, in my conversations with court administrators, I have been consistently informed that clerks of court are prohibited from interpreting or enforcing rules (such as the requirement that documents have paragraph numbers (N.D.R.Ct. 3.5(b)(2)) or that a certificate of service be signed by an attorney (N.D.R.Civ.P. 5(f)). By moving the e-filing requirements to an appendix of the rules, attorneys will actually have a rule requiring them to comply with these requirements, which has been missing from the beginning of Odyssey electronic filing being rolled out in North Dakota. But clerks of court may remain not only unbound by the rules but prohibited from following them. This is an opportunity to rectify that problem by providing clearly that clerks of court must accept proper documents, must reject improper documents, and must make the decision of whether a document is proper or not according to Appendix K and no other source.

The Group essentially agrees that Appendix K is a comprehensive list of reasons to reject a filing and clerks should use it as their guide when they reject or accept filings. The majority of the File & Serve User Group agreed there are benefits to adopting this change. This would likely allow for more uniformity across the state when a clerk is making the decision to accept or reject documents. Additionally, the Group also thinks that an addition to rule 3.5 would be necessary to allow clerks to reject for other reasons not listed in Appendix K; however, the clerk must contact the filer prior to doing so.

(c)(5) It should be made clear that the case number must be placed at the upper righthand portion of the first page of the document filed, as required by the referenced Rule 3.1(g).

The Group agreed to add the language regarding the placement of the case number in the upper right hand corner.

(a)(7) This requirement should apply to the filing descriptions for all documents filed in a case, not only to case initiation.

The group agreed to remove the subtitles in Appendix K to address the possible confusion of guidelines only applying to initiating cases.

(d)(1) This actually represents a general change in common practices, which should be made explicit. Presently, many filers use the filing description field as a continuation of the filing code. For example, one finds filing code "Motion" and description "In Limine," code "Transcript" and description "on Appeal," code "Exhibit" and description "A (Photograph of Accident Scene)," code "Affidavit" and description "of John Doe," or code "Sheriff's Return Served" and description "on Jane Roe." The wording of this paragraph of Appendix K implies that the filing code should never be assumed as part of the filing description and should thus be reproduced in the filing description." Either method is perfectly reasonable, but if one is mandatory then the mandate should be clear.

The group agreed to clarify the example given and hopefully eliminate the misconception that a user should re-enter the filing code description in the filing description field.

(a)(4)(A) There is no "filing comments field" applicable to filing an action. The only comments field I am aware of is per-document. This requirement is either impossible to comply with or very ambiguous. Does a filer have to input "defendant address unknown" in the Comments to Court for each of the documents being filed with the initiation of the action, or just one? This is an example of trying to use a hammer to drive a screw: The tool selected is inappropriate for the task at hand and the solution is to obtain a better tool or re-examine the task, rather than forcing the use of the inappropriate tool.

Finally, there is one guideline that the Group would like to have updated regarding (a)(4)(A) which Mr. Johnson states "there is no "filing comments field" applicable". Due to a rewrite of the File & Serve application, the field referred to in the guideline has been fittingly re-named to "Comments to the Court" to eliminate confusion.