

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

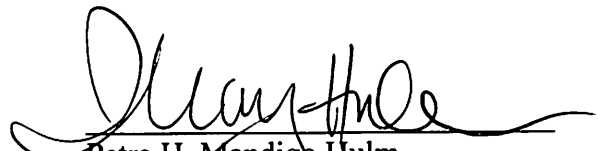
Supreme Court No. 20170433

Proposed Amendments to North Dakota Rule of Appellate Procedure 35.1

[¶1] On its own motion, the Court considered amendments to North Dakota Rule of Appellate Procedure 35.1 regarding summary disposition. 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 March 1, 2018.

[¶3] The Supreme Court of the State of North Dakota convened the 7th day of December, 2017, with the Honorable Gerald W. Vandewalle, Chief Justice, and the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen, Justices, directing the Chief Deputy Clerk of the Supreme Court to enter the above order.


Petra H. Mandigo Hulm
Chief Deputy Clerk
North Dakota Supreme Court

N.D.R.App.P.

RULE 35.1 SUMMARY DISPOSITION

(a) Affirmance by Summary Opinion. ~~In~~ The court may issue a summary affirmance 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~~ The court may affirm by an opinion citing this rule and indicating which one or more of the above criteria apply and, for Rule 35.1(a)(7), 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.

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; March 1, 2018.

Subdivision (a) was amended, effective March 1, 2018, to restate the requirements for summary affirmance.

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).