

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Proposed Amendments to the North Dakota:

Rules of Civil Procedure
Rules of Criminal Procedure
Rules of Appellate Procedure
Rules of Evidence
Rules of Court
Supreme Court Administrative Rules

Submitted by the
Joint Procedure Committee
July 2018

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Joint Procedure Committee,)
) PETITION FOR ADOPTION,
) AMENDMENT, OR
Petitioner,) REPEAL OF COURT RULES
)

TO: The Supreme Court of the State of North Dakota:

The Joint Procedure Committee petitions the Supreme Court, under N.D.R.Proc.R. § 3, for an order adopting the following proposals:

North Dakota Rules of Civil Procedure

Rule 56 - Summary Judgment

North Dakota Rules of Criminal Procedure

Rule 11 - Pleas

Rule 24 - Trial Jurors

Rule 32 - Sentence and Judgment

Rule 32.1 - Deferred Imposition of Sentence

Rule 32.2 - Pretrial Diversion

Rule 35 - Correcting or Reducing a Sentence

North Dakota Rules of Appellate Procedure

Rule 25 - Filing and Service

Rule 32 - Form of Briefs, Appendices, and Other Documents

Rule 35.1 - Summary Disposition

North Dakota Rules of Evidence

Rule 803 - Exceptions to the Rule Against Hearsay

Rule 902 - Evidence that is Self-Authenticating

North Dakota Rules of Court

Rule 3.1 - Pleadings

Rule 3.5 - Electronic Filing in the District Courts
Appendix K - Electronic Filing Requirements

North Dakota Supreme Court Administrative Rules

Rule 50 - Court Interpreter Qualifications and Procedures

Rule 52 - Contemporaneous Transmission by Reliable Electronic Means

This petition is supported by the attached material containing the proposed rules, proposed explanatory notes, and synopsis of the proposals.

Dated _____, 2018.

Members of the Joint Procedure Committee:

Honorable Todd L. Cresap
Honorable Laurie A. Fontaine
Honorable Bradley A. Cruff
Honorable Donald Hager
Honorable Gail H. Hagerty
Honorable William A. Herauf
Honorable Steven L. Marquart
Honorable Steven McCullough
Honorable Robin A. Schmidt

Mr. Bradley J. Beehler
Mr. Birch P. Burdick
Mr. Sean T. Foss
Mr. Mark A. Friese
Prof. Margaret Moore Jackson
Ms. Carol K. Larson
Mr. Zachary E. Pelham
Mr. Robert J. Schultz
Ms. Lisa M. Six
Mr. Lloyd C. Suhr

Justice Lisa K. Fair McEvers
Chair

SYNOPSIS OF PROPOSED AMENDMENTS

A. North Dakota Rules of Civil Procedure

Rule 56 - Summary Judgment

An amendment to subdivision (c) is proposed to establish a deadline for serving a motion, a deadline for a reply brief and length limits for principal, answer, and reply briefs.

B. North Dakota Rules of Criminal Procedure

Rule 11 - Pleas

An amendment to subdivision (b) is proposed to reference Rule 43(b)(2), which allows misdemeanor defendants to be absent from a plea proceeding.

Rule 24 - Trial Jurors

An amendment to subdivision (b) is proposed to allow a challenge for cause to be made only prior to a juror being sworn.

An amendment to subdivision (c) is proposed to allow retention of alternate jurors after the jury retires to deliberate.

Rule 32 - Sentence and Judgment

A new subdivision (d) is proposed to provide guidance for the sentencing of violent offenders.

Rule 32.1 - Deferred Imposition of Sentence

Amendments are proposed to delete language making the rule applicable only in misdemeanor and infraction cases. Under the proposed amendments, the rule would apply in all cases in which an order deferring imposition of sentence was entered.

Rule 32.2 - Pretrial Diversion

Amendments to subdivision (a) are proposed to specify that fees or costs allowed under the law are to be paid to the court and to allow the parties to agree that the defendant pay additional amounts to others as a condition of a pretrial diversion agreement.

Rule 35 - Correcting or Reducing a Sentence

An amendment to subdivision (a) is proposed to clarify that a court has jurisdiction to correct an illegal sentence at any time.

C. North Dakota Rules of Appellate Procedure

Rule 25 - Filing and Service

Amendments to subdivision (a) are proposed to require electronic filing by all parties other than self-represented litigants and prisoners; to eliminate fees that applied specifically to electronic filing; and to add requirements for documents filed electronically.

Rule 32 - Form of Briefs, Appendices, and Other Documents

Amendments to subdivision (a) are proposed to add a list of items excluded in computing the document length.

A new subdivision (e) is proposed to create a certificate of compliance requirement.

Rule 35.1 - Summary Disposition

Amendments to subdivision (a) are proposed to allow the Supreme Court to affirm the judgment of the district court based on findings of fact that meet the required standard of proof.

D. North Dakota Rules of Evidence

Rule 803 - Exceptions to the Rule Against Hearsay

An amendment to paragraph (16) is proposed allowing application of the ancient document exception only to documents prepared before January 1, 1998.

Rule 902 - Evidence that is Self-Authenticating

New paragraphs (13) and (14) are proposed to provide a means for self-authentication of designated electronic material.

E. North Dakota Rules of Court

Rule 3.1 - Pleadings

A new subdivision (i) is proposed to consolidate the rule's requirements related to the preparation and filing of paper documents in a single place.

Rule 3.5 - Electronic Filing in the District Courts

An amendment to subdivision (b) is proposed to exclude documents that consist of a single paragraph from the paragraph numbering requirement.

Appendix K - Electronic Filing Requirements

An amendment to subdivision (c) is proposed to exclude documents that consist of a single paragraph from the paragraph numbering requirement.

F. North Dakota Supreme Court Administrative Rules

Rule 50 - Court Interpreter Qualifications and Procedures

An amendment to section 2 is proposed to allow interpreters to be provided at no cost to parties and witnesses in sexual assault restraining order cases.

Rule 52 - Contemporaneous Transmission by Reliable Electronic Means

A new section 5 is proposed to provide a procedure for hearings by reliable electronic means in revocation of probation proceedings involving out of state offenders.

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RULE 56. SUMMARY JUDGMENT

(a) By a Claiming Party. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after:

- (1) 21 days have passed from commencement of the action; or
- (2) the opposing party serves a motion for summary judgment.

(b) By a Defending Party. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) Serving the Motion; Proceedings.

(1) Time for Service. The motion and supporting ~~papers must be served at least 34 days~~ documents must be filed at least 90 days before the day set for trial and 45 days before the day set for the hearing unless otherwise ordered. An opposing party ~~must have~~ has 30 days after service of a brief to serve and file an answer brief and supporting papers documents. The moving party has 14 days to serve and file a reply brief.

(2) Length of Brief.

(A) Word Limit for Proportional Typeface. If proportionately spaced typeface is used, a principal brief or answer brief may not exceed 8,000 words, and a reply brief may not exceed 2,000 words, excluding words in the table of contents and the table of citations. Footnotes must be included in the word count.

22 (B) Page Limit for Monospaced Typeface. If monospaced typeface is used, a
23 principal brief or answer brief may not exceed 32 pages, and a reply brief may not exceed
24 eight pages, excluding pages in the table of contents and the table of citations. Footnotes
25 must be included in the page count..

26 (C) Request to Exceed Volume Limitations. Upon written application and good
27 cause shown, the court may enlarge the word or page volume limits provided in this rule.
28 The application may not exceed two pages and must be filed no later than seven days
29 prior to the deadline for filing the brief.

30 (3) Judgment. The judgment sought shall be rendered if the pleadings, the
31 discovery and disclosure materials on file, and any affidavits show that there is no
32 genuine issue as to any material fact and that the moving party is entitled to judgment as a
33 matter of law. Summary judgment, when appropriate, may be rendered against the
34 moving party.

35 (d) Case Not Fully Adjudicated on the Motion.

36 (1) Establishing Facts. If summary judgment is not rendered on the whole action,
37 the court shall, to the extent practicable, determine what material facts are not genuinely
38 at issue. The court shall so determine by examining the pleadings and evidence before it
39 and by interrogating the attorneys. It shall then issue an order specifying what facts,
40 including items of damages or other relief, are not genuinely at issue. The facts so
41 specified must be treated as established in the action.

42 (2) Establishing Liability. An interlocutory summary judgment may be rendered on

43 liability alone, even if there is a genuine issue on the amount of damages.

44 (e) Affidavits; Further Testimony.

45 (1) In General. A supporting or opposing affidavit must be made on personal
46 knowledge, set out facts that would be admissible in evidence, and show that the affiant is
47 competent to testify on the matters stated. If a ~~paper~~ document or part of a ~~paper~~
48 document is referred to in an affidavit, a sworn or certified copy must be attached to or
49 served with the affidavit. The court may permit an affidavit to be supplemented or
50 opposed by depositions, answers to interrogatories, or additional affidavits.

51 (2) Opposing Party's Obligation to Respond. When a motion for summary
52 judgment is properly made and supported, an opposing party may not rely merely on
53 allegations or denials in its own pleading; rather, its response must, by affidavits or as
54 otherwise provided in this rule, set out specific facts showing a genuine issue for trial. If
55 the opposing party does not so respond, summary judgment shall, if appropriate, be
56 entered against that party.

57 (f) When Affidavits Are Unavailable. If a party opposing the motion shows by
58 affidavit that, for specified reasons, it cannot present facts essential to justify its
59 opposition, the court may:

60 (1) deny the motion;

61 (2) order a continuance to enable affidavits to be obtained, depositions to be taken,
62 or other discovery to be undertaken; or

63 (3) issue any other just order.

64 (g) Affidavit Submitted in Bad Faith. If satisfied that an affidavit under this rule is
65 submitted in bad faith or solely for delay, the court must order the submitting party to pay
66 the other party the reasonable expenses, including attorney's fees, it incurred as a result.
67 An offending party or attorney may also be held in contempt.

68 EXPLANATORY NOTE

69 Rule 56 was amended, effective March 1, 1990; March 1, 1996; March 1, 1997;
70 March 1, 2011; _____.

71 ~~Under subdivision (c) a party resisting a motion for summary judgment has the~~
72 ~~responsibility to draw the court's attention to the page and line of a deposition or other~~
73 ~~document containing the competent admissible evidence raising a material factual issue,~~
74 ~~or from which the trier of fact may draw an inference creating a material factual issue.~~
75 ~~First National Bank v. Clark, 332 N.W.2d 264 (N.D. 1983).~~

76 Paragraph (a)(1) was amended, effective March 1, 2011, to increase the time to
77 move for summary judgment from 20 to 21 days after commencement of the action.

78 Subdivision (c) was amended, effective _____, to establish a deadline
79 for serving a motion, a deadline for a reply brief and length limits for principal, answer,
80 and reply briefs.

81 Under subdivision (e) a party resisting a motion for summary judgment has the
82 responsibility to draw the court's attention to the page and line of a deposition or other
83 document containing the competent admissible evidence raising a material factual issue,
84 or from which the trier of fact may draw an inference creating a material factual issue.

85 First National Bank v. Clark, 332 N.W.2d 264 (N.D. 1983).

86 Rule 56 was amended, effective March 1, 2011, in response to the December 1,
87 2007, revision of the Federal Rules of Civil Procedure. The language and organization of
88 the rule were changed to make the rule more easily understood and to make style and
89 terminology consistent throughout the rules.

90 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 4-6;
91 January 25, 2018, pages 4-6; September 28, 2017, pages 17-19; April 29-30, 2010, page
92 15; September 24-25, 2009, pages 23-24; April 25, 1996, pages 11-12; April 27-28, 1995,
93 page 21; April 20, 1989, page 2; December 3, 1987, page 11; November 29, 1984, page
94 19; November 29-30, 1979, page 17; Fed.R.Civ.P. 56.

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. The defendant, any defendant's attorney, and the prosecuting attorney must consent in writing to a conditional plea filed with the court. If the court accepts the conditional plea, it must enter an order. The resulting judgment must specify it is conditional. 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

22 proceeding and, if necessary, the right to have the counsel provided under Rule 44;

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

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

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

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

30 (H) any mandatory minimum penalty;

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

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

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

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

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

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

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

49 (c) Plea Agreement Procedure.

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

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

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

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

60 (2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in
61 open court when the plea is offered, unless the court for good cause allows the parties to
62 disclose the plea agreement in camera.

63 (3) Judicial Consideration of a Plea Agreement.

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

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

70 (4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must
71 inform the defendant that, to the extent the plea agreement is of the type specified in Rule
72 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

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

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

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

79 (C) advise the defendant personally that if the plea is not withdrawn, the court may
80 dispose of the case less favorably toward the defendant than the plea agreement
81 contemplated.

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

85 (d) Withdrawing a Guilty Plea.

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

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

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

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

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

91 (2) Finality of a Guilty Plea. Unless the defendant proves that withdrawal is

92 necessary to correct a manifest injustice, the defendant may not withdraw a plea of guilty

93 after the court has imposed sentence.

94 (3) Prosecution Reliance on Plea. If the prosecution has been substantially

95 prejudiced by reliance on the defendant's plea, the court may deny a plea withdrawal

96 request.

97 (e) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related

98 Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any

99 related statement is governed by N.D.R.Ev. 410.

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

101 defendant enters a plea must be made. If there is a plea of guilty, the record must include

102 the court's inquiries and advice to the defendant required under Rule 11(b) and (c).

103 (g) Defendant's Presence at Plea Proceeding. A plea of guilty may be made only by

104 the defendant, in open court, unless the defendant is a corporation, in which case it may

105 be made by counsel; or in a non-felony case, the defendant may petition to enter a plea of

106 guilty as provided in Rule 43(b).

107 EXPLANATORY NOTE

108 Rule 11 was amended, effective March 1, 1986; March 1, 1990; March 1, 1996;
109 March 1, 2006; June 1, 2006; March 1, 2010; March 1, 2016; March 1,
110 2017;_____.

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

117 Rule 11 was amended, effective March 1, 2006, in response to the December 1,
118 2002, revision of the Federal Rules of Criminal Procedure. The language and
119 organization of the rule were changed to make the rule more easily understood and to
120 make style and terminology consistent throughout the rules.

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

124 Paragraph (a)(2) was adopted effective March 1, 1986. This provision allows the
125 defendant, with the approval of the court and the consent of the prosecuting attorney, to
126 enter a conditional plea of guilty and reserve in writing the right, on appeal of the adverse

127 determination of any specified pretrial motion. The conditional plea procedure is intended
128 to conserve prosecutorial and judicial resources and advance speedy trial objectives by
129 avoiding the necessity of a trial simply to preserve pretrial issues for appellate review.

130 Paragraph (a)(2) was amended, effective March 1, 2017, to clarify the procedure
131 for entering a conditional plea of guilty.

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

137 Paragraph (b)(1) requires the court to determine if the defendant understands the
138 nature of the charge and requires the court to inform the defendant of and determine that
139 the defendant understands the mandatory minimum punishment, if any, and the maximum
140 possible punishment. The objective is to insure that the defendant knows what minimum
141 sentence the judge MUST impose and the maximum sentence the judge MAY impose
142 and, further, to explain the consecutive sentencing possibilities when the defendant pleads
143 to more than one offense. This provision is included so that the judicial warning
144 effectively serves to overcome subsequent objections by the defendant that the
145 defendant's counsel gave the defendant erroneous information. Paragraph (b)(1) also
146 specifies the constitutional rights the defendant waives by a plea of guilty and ensures a
147 knowing and intelligent waiver of counsel is made. A similar requirement is found in

148 Rule 5(b) governing the initial appearance.

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

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

159 Paragraph (b)(2) requires the court to determine that a plea of guilty is voluntary
160 before accepting it. Paragraph (b)(2), together with subdivision (c), affords the court an
161 adequate basis for rejecting an improper plea agreement induced by threats or
162 inappropriate promises. The rule specifies that the court personally address the defendant
163 in determining the voluntariness of the plea.

164 Paragraph (b)(2) was amended, effective _____, to reference Rule
165 43(b)(2), which allows misdemeanor defendants to be absent from a plea proceeding.

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

168 Paragraph (b)(4) was added to the rule, effective March 1, 2014, and requires the

169 court to obtain an acknowledgment from the defendant on whether the defendant is
170 admitting guilt, or instead is maintaining innocence but pleading guilty because evidence
171 exists from which the trier of fact could reasonably conclude the defendant committed the
172 crime.

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

182 Paragraph (c)(1) specifies that both the attorney for the prosecution and the
183 attorney for the defense, or the defendant when acting pro se, participate in plea
184 discussions. It also makes clear that there are three possible concessions that may be made
185 in a plea agreement: first, the charge may be reduced to a lesser or related offense;
186 second, the attorney for the prosecution may agree not to recommend or not oppose the
187 imposition of a particular sentence; or third, the attorney for the prosecution may promise
188 to move for a dismissal of other charges. The court is not permitted to participate in plea
189 discussions because of the possibility that the defendant would believe that the defendant

190 would not receive a fair trial, if no agreement had been reached or the court rejected the
191 agreement, and a subsequent trial ensued before the same judge.

192 Paragraph (c)(2) provides that the parties must disclose any plea agreement in open
193 court or, for good cause, in camera. Paragraph (c)(3) gives the court, upon notice of the
194 plea agreement, the option of accepting or rejecting the agreement or deferring its
195 decision until receipt of the presentence report. The court must inform the defendant that
196 it may choose not to accept a sentence recommendation made as part of a plea agreement.
197 Decisions on plea agreements are left to the discretion of the individual trial judge.

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

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

209 Paragraph (c)(6) requires that the court be notified of the existence of a plea
210 agreement at the arraignment or at another time prior to trial fixed by the court unless it

211 can be shown that for good cause this was not done. Having a plea entered at this stage
212 provides a reasonable time for the defendant to consult with counsel and for counsel to
213 complete any plea discussions with the attorney for the prosecution. The objective of the
214 provision is to make clear that the court has authority to require a plea agreement to be
215 disclosed sufficiently in advance of trial so as not to interfere with the efficient
216 scheduling of criminal cases.

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

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

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

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

230 Rule 11 does not include a subdivision entitled harmless error and differs from the
231 1983 amendment to Fed.R.Crim.P. 11(h) in that respect. Rule 52(a), Harmless Error, is

232 intended to have general application to all the criminal rules of procedure.

233 SOURCES: Joint Procedure Committee Minutes of January 25, 2018, page 8;
234 January 28-29, 2016, page 7; April 23-24, 2015, page 14; January 29-30, 2015, page 23;
235 January 31-February 1, 2013, page 12; September 27, 2012, pages 18-21; January 29-30,
236 2009, pages 11-13, 19-20; April 27-28, 2006, pages 2-5, 15-17; September 22-23, 2005,
237 pages 17-18; September 23-24, 2004, pages 5-9; April 29-30, 2004, pages 28-30; January
238 26-27, 1995, pages 5-6; September 29-30, 1994, pages 2-4; April 28-29, 1994, pages
239 10-12; April 20, 1989, page 4; December 3, 1987, page 15; June 22, 1984, pages 11-16;
240 April 26, 1984, pages 2-3; April 26-27, 1979, pages 4-7; May 25-26, 1978, pages 31-34;
241 March 16-17, 1978, page 20; January 12-13, 1978, pages 5-6; January 10, 1977, page 4;
242 April 24-26, 1973, pages 8-9; December 11-15, 1972, page 43; May 11-12, 1972, pages
243 2-6; November 18-20, 1971, pages 34-38; September 17-18, 1970, pages 1-6; May 3-4,
244 1968, page 9.

245 STATUTES AFFECTED:

246 SUPERSEDED: N.D.C.C. §§ 29-13-02, 29-14-01, 29-14-02, 29-14-14, 29-14-15,
247 29-14-16, 29-14-17, 29-14-18, 29-14-19, 29-14-20, 29-14-21, 29-14-22, 29-14-23,
248 29-14-24, 29-14-26, 29-14-27, 33-12-17, 33-12-18.

249 CONSIDERED: N.D.C.C. § 31-13-03.

250 CROSS REFERENCE: N.D.R.Crim.P. 43 (Defendant's Presence); N.D.R.Crim.P.
251 44 (Right to and Appointment of Counsel); N.D.R.Ev. 410 (Offer to Plead Guilty; Nolo
252 Contendere; Withdrawn Plea of Guilty); N.D.Sup.Ct.Admin.R. 52 (Contemporaneous

253 Transmission by Reliable Electronic Means).

RULE 24. TRIAL JURORS

(a) Examination of Jurors.

(1) Prospective Jurors. When a 12-person jury is to be impaneled, the court must call for examination not more than the number of prospective jurors that equals the number of jurors necessary for the jury plus the number of peremptory challenges available to the parties, unless otherwise stipulated by the parties and approved by the court. When a six-person jury is to be impaneled, the court may call for examination a number of prospective jurors equal to the number of jurors necessary for the jury plus the number of peremptory challenges available to the parties. If, after the parties have exercised their challenges, there are more jurors than required by Rule 23, the excess jurors must be excused in the inverse order in which they were called.

(2) Examination. The court must permit the defendant or the defendant's attorney and the prosecuting attorney to participate in the examination of prospective jurors. The court may allow individual examination of prospective jurors in chambers.

(b) Challenges.

(1) Challenges for Cause.

(A) By the Court. If the court, after examination of any prospective juror, finds grounds for challenge for cause, the court must excuse that prospective juror.

(B) By a Party. If the court does not excuse a prospective juror for cause, any party may make a challenge for cause. A challenge to a prospective juror must be made before

22 the juror is sworn to try the case, ~~unless the court permits it to be made after the~~
23 ~~prospective juror is sworn but before jeopardy has attached.~~

24 (2) Peremptory Challenges. Each side is entitled to:

25 (A) 4 peremptory challenges when a 6-person jury is to be impaneled; and

26 (B) 6 peremptory challenges when a 12-person jury is to be impaneled, except
27 when the offense charged is a AA felony, each side is entitled to 10 peremptory
28 challenges.

29 If there is more than one defendant, the court may allow the defendants additional
30 peremptory challenges and permit them to be exercised separately or jointly.

31 (c) Alternate Jurors.

32 (1) In General. The court may impanel up to four alternate jurors to replace any
33 jurors who are unable to perform or who are disqualified from performing their duties.

34 (2) Procedure.

35 (A) Alternate jurors must have the same qualifications and be selected and sworn
36 in the same manner as any other jurors.

37 (B) Alternate jurors replace jurors in the same sequence in which the alternates
38 were selected. An alternate juror who replaces a juror has the same authority as the other
39 jurors.

40 ~~(3) Release of Alternate Jurors. An alternate juror who does not replace a juror~~
41 ~~must be discharged after the jury retires to consider its verdict, unless the parties~~

42 ~~otherwise agree.~~ Retaining Alternate Jurors. The court may retain alternate jurors after

43 the jury retires to deliberate. The court must ensure that a retained alternate does not
44 discuss the case with anyone until that alternate replaces a juror or is discharged. If an
45 alternate replaces a juror after deliberations have begun, the court must instruct the jury to
46 begin its deliberations anew.

47 (4) Peremptory Challenges. Each side is entitled to the number of additional
48 peremptory challenges to prospective alternate jurors specified below. These additional
49 challenges may be used only to remove alternate jurors.

50 (A) One or Two Alternates. One additional peremptory challenge is permitted
51 when one or two alternate jurors are impaneled.

52 (B) Three or Four Alternates. Two additional peremptory challenges are permitted
53 when three or four alternate jurors are impaneled.

54 EXPLANATORY NOTE

55 Rule 24 was amended, effective January 1, 1988; March 1, 1990; March 1, 2006;
56 March 1, 2011; _____.

57 Rule 24 is an adaptation of Fed.R.Crim.P. 24, and is modified to conform to
58 existing state practice. Rule 24 is intended to ensure that a defendant's Sixth Amendment
59 guarantee of an "impartial jury" is protected. To implement this right to an impartial jury,
60 subdivision (a) permits an examination of prospective jurors to determine whether any
61 juror is biased for or against either party, or whether any juror's status or views are such
62 that bias may be inferred. Others may be challenged peremptorily, but the number of
63 those challenges is limited by subdivision (b).

64 ~~Subdivision (b) was amended, effective March 1, 1990. The amendments are~~
65 ~~technical in nature and no substantive change is intended.~~

66 Subdivision (a) was modified to allow the continuance of the present practice
67 permitting the examination of jurors by opposing parties or their attorneys and by the
68 court. This differs from the federal rule, which gives the court discretion in determining
69 whether it alone should examine prospective jurors or also allow the opposing parties to
70 do so.

71 Subdivision (a) was amended, effective January 1, 1988, to provide for a uniform
72 jury selection process. However, this procedure is discretionary with the court.

73 Paragraph (a)(1) was amended, effective March 1, 2011, to provide a uniform jury
74 selection process for a 12-person jury, unless otherwise stipulated by the parties and
75 approved by the court.

76 Subdivision (b) was amended, effective March 1, 1990. The amendments are
77 technical in nature and no substantive change is intended.

78 Subdivision (b) was amended, effective March 1, 2011, to interchange paragraphs
79 (b)(1) and (b)(2). Former paragraph (b)(1) became paragraph (b)(2), and former
80 paragraph (b)(2) became (b)(1).

81 Paragraph (b)(1), formerly paragraph (b)(2), regarding challenges for cause, is not
82 in the federal rules. This subsection is necessary to preclude any question that challenges
83 for cause are a definite part of the examination of prospective jurors. This rule also
84 obligates the judge to dismiss a prospective juror if grounds for cause exist, thereby

85 avoiding prejudicing other prospective jurors against the attorneys.

86 Paragraph (b)(1) was amended, effective _____, to allow a
87 challenge for cause to be made only prior to a juror being sworn.

88 Paragraph (b)(2), formerly paragraph (b)(1), follows existing state law and
89 maintains the number of peremptory challenges historically allowed. The provision of
90 subdivision (b) that allows additional peremptory challenges in trials with multiple
91 defendants was an innovation of former practice.

92 Under paragraph (b)(2), a peremptory challenge is exercised by a party not in the
93 selection but rather in the rejection of prospective jurors. A peremptory challenge is not
94 aimed at disqualification, but is exercised against a qualified trial juror as a matter of
95 grace to the challenger. The right to peremptory challenges is afforded in aid of securing a
96 fair and impartial jury.

97 Subdivision (c) is taken from the federal rule and replaced superseded statutes.
98 ~~This procedure avoids a mistrial whenever an alternate juror is substituted for a juror who~~
99 ~~has become disqualified by illness or otherwise before submission of the case to the jury.~~

100 Paragraph (c)(3) was amended, effective _____, to allow retention of
101 alternate jurors after the jury retires to deliberate.

102 Rule 24 was amended, effective March 1, 2006, in response to the December 1,
103 2002, revision of the Federal Rules of Criminal Procedure. The language and
104 organization of the rule were changed to make the rule more easily understood and to
105 make style and terminology consistent throughout the rules.

106 SOURCES: Supreme Court Conference Minutes of January 17, 1990; September
107 28, 1987; Joint Procedure Committee Minutes of April 27, 2018, page 6; September 28,
108 2017, page 19; April 29-30, 2010, page 27; January 28-29, 2010, pages 16-19; January
109 27-28, 2005, pages 19-20; April 20, 1989, page 4; December 3, 1987, page 15; May
110 21-22, 1987, pages 16-17; February 19-20, 1987, pages 19-20; October 17-20, 1972,
111 pages 12-18; September 26-27, 1968, pages 11-13; Fed.R.Crim.P. 24.

112 STATUTES AFFECTED:

113 SUPERSEDED: N.D.C.C. §§ 29-17-27 to 29-17-29, 29-17-31, 29-17-32,
114 29-17-39, 29-17-40, 29-17-41, 29-17-42, 29-17-43, 29-17-47, 29-17-48, 29-21-35,
115 33-12-21.

116 CONSIDERED: N.D.C.C. §§ 27-09.1-01 to 27-09.1-22, 29-17-01 to 29-17-15,
117 29-17-30, 29-17-33, 29-17-35, 29-17-36, 29-17-38, 29-17-44 to 29-17-46.

118 CROSS REFERENCE: N.D.R.Crim.P. 23 (Trial by Jury or by Court).

RULE 32. SENTENCING AND JUDGMENT

(a) Sentence.

(1) Time of Sentencing. The court must impose sentence or other authorized disposition without unnecessary delay. Until disposition, the court may continue or alter bail or require the defendant to be held without bail.

(2) Presentence Requirements. Before imposing sentence, the court must:

(A) determine whether the defendant and the defendant's counsel had an opportunity to read and discuss the presentence investigation report, if made available under Rule 32(c)(4)(B), or a summary made available under Rule 32(c)(4)(D);

(B) give counsel an opportunity to speak on behalf of the defendant; and

(C) determine whether the defendant wishes to make a statement on the defendant's own behalf or wishes to present information in mitigation of punishment or information that would require the court to withhold judgment and sentence.

The court must give the prosecution an opportunity to be heard on any matter material to the imposition of sentence.

(3) Notification of Right to Appeal. After imposing sentence in a case that has gone to trial, the court must advise the defendant of the defendant's right to appeal and of the right of a person who is unable to pay the costs of an appeal to apply for appointment of counsel for purposes of appeal. The court is under no duty to advise the defendant of any right of appeal when sentence is imposed following a plea of guilty.

21 (b) Judgment. A judgment of conviction must include the plea, the verdict, and the
22 sentence imposed. If the defendant is found not guilty or for any reason is entitled to be
23 discharged, the court must enter judgment accordingly. The judge must sign and the clerk
24 must enter the judgment.

25 (c) Presentence Investigation.

26 (1) When Made. The court may order a presentence investigation and report at any
27 time. Except when the defendant consents in writing, the report may not be submitted to
28 the court or its contents disclosed unless the defendant has pleaded guilty or has been
29 found guilty.

30 (2) Presence of Counsel. The defendant's counsel is entitled to notice and a
31 reasonable opportunity to attend any interview of the defendant conducted by parole and
32 probation staff in the course of a presentence investigation.

33 (3) Report.

34 (A) Contents of Report. The presentence report may contain the defendant's
35 previous criminal record and information about the defendant's characteristics, including:

36 (i) family, educational, and social history;

37 (ii) employment history and financial condition;

38 (iii) circumstances affecting the defendant's behavior that may be helpful in
39 imposing sentence or in the correctional treatment of the defendant; and

40 (iv) any information required by the court.

41 (B) Information Excluded from Report. The following types of information may

42 not be included in a presentence report, but may be submitted to the court as an addendum
43 to the report:

44 (i) any diagnostic or prognostic opinion that, if disclosed, might seriously disrupt a
45 program of rehabilitation;

46 (ii) information or sources of information obtained confidentially, but subject to
47 disclosure by the court as provided in Rule 32(c)(4)(A);

48 (iii) any sentence recommendation by parole and probation staff or the victim;

49 (iv) any victim impact statement; or

50 (v) any other information, including medical, psychiatric, or psychological
51 information, information relating to the victim or victims, and other matters the court may
52 consider confidential, that if disclosed, might result in harm, physical or otherwise, to the
53 defendant, to a victim, or to other persons.

54 (4) Disclosure of Presentence Report.

55 (A) Confidentiality. The presentence report and any addendum are confidential.

56 Neither the public nor the parties may read or copy the presentence report or any
57 addendum, unless the court, in its discretion, gives permission.

58 (B) Disclosure to Defendant. If the court allows the defendant to examine any part
59 of the presentence report or any addendum, this disclosure must be made at least 14 days
60 before sentence is imposed, unless the defendant waives the 14-day requirement. The
61 court must provide the defendant and the defendant's counsel a copy of the disclosed
62 material and give them an opportunity to comment. The court may allow the defendant

63 and the defendant's counsel to introduce testimony or other information relating to any
64 alleged factual inaccuracy in the disclosed material. Any material disclosed to the
65 defendant and the defendant's counsel must also be disclosed to the prosecuting attorney
66 who must disclose it to the victim if requested to do so. Material from a presentence
67 report and any addendum disclosed under this provision must remain confidential and
68 may not be read or copied by anyone else except as allowed by Rule 32(c) or federal law.

69 (C) Disclosure to Attorney General. The court may disclose the presentence report
70 and any addendum to the Attorney General or the Attorney General's designee only for
71 purposes of the individual risk assessment required by N.D.C.C. § 12.1-32-15 (12) and
72 (13). A presentence report and addendum disclosed to the Attorney General or the
73 Attorney General's designee must remain confidential and may not be read or copied by
74 anyone else except as allowed by Rule 32(c) or federal law.

75 (D) Disclosure to Department of Corrections and Rehabilitation. The presentence
76 report and any addendum is available to the Department of Corrections and Rehabilitation
77 for use in providing assessment and treatment services to the person when in the
78 Department's custody, on parole from the Department, or under the supervision and
79 management of the Department. The Department may share the presentence report and
80 any addendum with a public treatment or transition facility or licensed private treatment
81 or transition facility providing assessment and treatment services to the person when in
82 the Department's custody, on parole from the Department, or under the supervision and
83 management of the Department. The Department may share the presentence report and

84 any addendum with the compact administrator of a supervising state in accordance with
85 the Interstate Compact for Adult Offender Supervision, N.D.C.C. ch. 12-65. A
86 presentence report and any addendum disclosed under this provision must remain
87 confidential and may not be read or copied by anyone else except as allowed by Rule
88 32(c) or federal law.

89 (E) Harmful Information. If the court finds there is information in the presentence
90 report or any addendum that would be harmful to the defendant or to other persons if
91 disclosed, the court must not permit the public or the parties to read or copy that portion
92 of the report or the addendum. The court must give an oral or written summary of any
93 non-disclosed information it will rely on in determining sentence and must give the
94 defendant or the defendant's counsel an opportunity to comment. The court may give its
95 summary to the parties in camera.

96 (F) Defendant's Comments. If the comments of the defendant and the defendant's
97 counsel, or testimony or other information introduced by them, allege any factual
98 inaccuracy in the presentence report or any addendum, or in any of the information
99 summarized, the court, for each matter controverted, must:

- 100 (i) make a finding on the allegation, or
101 (ii) make a determination that no finding is necessary because the matter
102 controverted will not be taken into account in sentencing.

103 A written record of the court's findings and determinations must be appended to
104 and accompany any copy of the presentence report later made available to the parole

105 board or the pardon clerk.

106 (d) ~~[Transferred]~~ Sentencing of Violent Offenders. In determining the sentence
107 imposed upon a violent offender in accordance with N.D.C.C. § 12.1-32-09.1, the trial
108 court must compute the remaining life expectancy of the offender by reference to N.D.
109 Sup. Ct. Admin. R. 51.

110 (e) Probation. After conviction of an offense, the defendant may be placed on
111 probation as provided by law.

112 (f) Revocation of Probation When Court Retains Jurisdiction Under Law.

113 (1) Taking into Custody. If there is probable cause to believe a probationer has
114 violated a condition of probation, the court that originally placed the probationer on
115 probation may conduct a hearing on the alleged violation. Any state parole and probation
116 officer or any peace officer directed by a state parole and probation officer or directed by
117 an order of the court having jurisdiction may take the probationer into custody and bring
118 the probationer before the court. Costs incurred in bringing the probationer before the
119 court must be borne by the county in which the probation was granted. The probationer
120 may be admitted to bail pending the hearing.

121 (2) Transfer. If the probationer does not contest the violation, the hearing may be
122 transferred, under the procedure set out in Rule 20, to the county where the probationer is
123 arrested, held or present. This procedure is available only upon the consent of the court
124 that placed the probationer on probation.

125 (3) Hearing.

126 (A) In General. The hearing must be in open court with:

127 (i) the probationer present;

128 (ii) a prior written notice of the alleged violation given to the probationer; and

129 (iii) representation by retained or appointed counsel unless waived.

130 The probationer must be given an opportunity to make a statement and present
131 evidence in mitigation.

132 (B) Resolution. If the probationer contests the violation, the prosecution must
133 establish the violation by a preponderance of the evidence. After the hearing and subject
134 to limitations imposed by law, the court may:

135 (i) revoke an order suspending a sentence or an order suspending the imposition of
136 sentence; or

137 (ii) continue probation on the same or different conditions.

138 A record of the proceedings must be made.

139 EXPLANATORY NOTE

140 Rule 32 was amended, effective January 1, 1980; March 1, 1986; March 1, 1990;
141 March 1, 1992, on an emergency basis; July 14, 1993; March 1, 1999; October 31, 2001,
142 on an emergency basis; April 1, 2002; March 1, 2006; March 1, 2007; March 1, 2008;
143 March 1, 2010; March 1, 2011; May 1, 2017;_____.

144 Rule 32 was amended, effective March 1, 2006, in response to the December 1,
145 2002, revision of the Federal Rules of Criminal Procedure. The language and
146 organization of the rule were changed to make the rule more easily understood and to

147 make style and terminology consistent throughout the rules.

148 Paragraph (c)(4) was amended, effective March 1, 1999, to allow the court to
149 decide, in its discretion, whether a presentence investigation report and any addendum
150 may be inspected by the public or the parties.

151 Parole and probation staff conducting a presentence investigation must be mindful
152 that they cannot make a binding promise of complete confidentiality regarding
153 information included in the addendum to a presentence report. Under paragraph (c)(4),
154 the promise of confidentiality is subject to the court's discretion to allow the parties to
155 inspect the addendum.

156 Paragraph (c)(4) was amended, effective October 31, 2001, to allow disclosure of
157 the presentence report and any addendum to the Attorney General or the Attorney
158 General's designee to enable the Attorney General to comply with subsections 12 and 13
159 of N.D.C.C. § 12.1-32-15. Disclosure to the Attorney General or the Attorney General's
160 designee must comply with all applicable state and federal statutes, rules and regulations
161 governing drug and alcohol records, and private medical information.

162 Paragraph (c)(4) was amended, effective March 1, 2008, to allow disclosure of the
163 presentence report and any addendum to the Department of Corrections and
164 Rehabilitation or its designees so that the Department can obtain assessment and
165 treatment services. Disclosure to the Department or its designees must comply with all
166 applicable state and federal statutes, rules and regulations governing drug and alcohol
167 records, and private medical information.

168 Subparagraph (c)(4)(B) was amended, effective March 1, 2011, to change the time
169 to disclose a presentence report from 10 to 14 days before sentence is imposed.

170 Subparagraph (c)(4)(B) was amended, effective May 1, 2017, to allow the
171 prosecutor to disclose to the victim, on request, any material from the presentence report
172 disclosed to the defendant and the defendant's counsel. "Victim" is defined in N.D. Const.
173 Art. I, § 25(4).

174 Subdivision (d) was adopted, effective _____ to provide guidance for
175 the sentencing of violent offenders.

176 Former subdivision (d) on withdrawal of guilty pleas was transferred to Rule 11
177 effective March 1, 2010.

178 Paragraph (f)(2) was added, effective March 1, 2006, to allow transfer of a
179 revocation hearing to the county where the probationer is present. Rule 20 (Transfer from
180 the County for Plea and Sentence) sets out the procedure for obtaining a transfer.

181 Paragraph (f)(3) is adapted in part from the A.B.A. Standards for Criminal Justice,
182 Standards Relating to Probation, § 5.4 at 65 (Approved Draft, 1970). Paragraph (f)(3) was
183 amended, effective, March 1, 2007, to clarify that a probationer must be given the
184 opportunity to make a statement and present mitigating information at a revocation
185 hearing.

186 SOURCES: Joint Procedure Committee Minutes of September 28, 2017, pages 19-
187 21; January 26-27, 2017, pages 11-14; April 29-30, 2010, page 20; January 29-30, 2009,
188 pages 11-13, 19-20; January 24, 2008; January 26, 2006, page 9; April 28-29, 2005, pages

189 3-5; January 27-28, 2005, pages 28-29; January 24-25, 2002, pages 9-14; January 29-30,
190 1998, pages 10-11; September 25-26, 1997, pages 3-6; January 30, 1997, pages 2-6;
191 September 26-27, 1996, pages 6-8; April 25, 1996, pages 16-18; November 7-8, 1991,
192 page 4; October 25-26, 1990, pages 15-16; April 20, 1989, page 4; December 3, 1987,
193 page 15; November 29, 1984, pages 15-18; April 26, 1984, page 6; December 7-8, 1978,
194 pages 15-23; October 12-13, 1978, pages 10-14; December 11-15, 1972, pages 5-16;
195 November 20-21, 1969, pages 5-6; May 15-16, 1969, pages 1-2; February 20-21, 1969,
196 pages 5-14; Fed.R.Crim.P. 32.

197 STATUTES AFFECTED:

198 SUPERSEDED: N.D.C.C. §§ 12-53-15, 29-14-22, 29-26-01, 29-26-02, 29-26-15,
199 29-26-19, 33-12-26, 33-12-27, 33-12-29.

200 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. §§ 1-01-41, 12-53-03,
201 12-53-04, 12-53-05, 12-53-06, 12-53-10, 12-53-11, 12-53-12, 12-53-13, 12-53-14,
202 12-53-17, 12-53-20, 12-55-30, 12.1-32-09.1, 12.1-32-15, 29-26-03, 29-26-11, 29-26-12,
203 29-26-13, 29-26-14, 29-26-16, 29-26-17, 29-26-18, 29-26-20, 29-26-23, 33-12-28.

204 CROSS REFERENCE: N.D.R.Crim.P. 20 (Transfer from the County for Plea and
205 Sentence); N.D.C.C. §§ 12.1-32-09.1; 12.1-32-15.

RULE 32.1. DEFERRED IMPOSITION OF SENTENCE

An order deferring imposition of sentence ~~for an infraction or a misdemeanor~~ must require that, 61 days after expiration or termination of probation:

- (a) the defendant's guilty plea be withdrawn, or the guilty verdict be set aside;
- (b) the case be dismissed; and
- (c) the file be sealed.

The court may, by order, modify an order deferring imposition of sentence no later than 60 days after expiration or termination of probation.

EXPLANATORY NOTE

Rule 32.1 was amended, effective March 1, 2006; March 1, 2012;

_____.

Rule 32.1 was adopted, effective March 1, 1999. The purpose of the rule is to provide uniformity in the processing of deferred impositions of sentence, and to prevent the disparity of treatment received by defendants depending upon their county of venue in misdemeanor cases.

When deferring imposition of sentence, the judge should advise the defendant if the defendant fulfills the conditions of probation the guilty plea will be withdrawn, or the guilty verdict set aside, the case dismissed, and the file sealed.

An order deferring imposition of sentence is not a judgment. However, for purpose of appeal, an order deferring imposition of sentence is equivalent to a judgment under

22 N.D.R.Crim.P. 32(b).

23 This rule does not follow Fed.R.Crim.P. 32.1, which deals with revoking or
24 modifying probation or supervised release.

25 Rule 32.1 was amended, effective March 1, 2006, in response to the December 1,
26 2002, revision of the Federal Rules of Criminal Procedure. The language and
27 organization of the rule were changed to make the rule more easily understood and to
28 make style and terminology consistent throughout the rules.

29 Rule 32.1 was amended, effective March 1, 2012, to clarify that any modification
30 of an order deferring imposition of sentence must take place no later than 60 days after
31 the expiration or termination of probation.

32 Rule 32.1 was amended, effective _____, to delete language that
33 made the rule applicable only in misdemeanor and infraction cases. Under the
34 amendment, the rule applies in all cases in which an order deferring imposition of
35 sentence was entered.

36 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 6-7;
37 September 23-24, 2010, pages 23-24; January 27-28, 2005, page 29; January 29-30, 1998,
38 pages 14-17; September 25-26, 1997, pages 8-10.

39 STATUTES AFFECTED:

40 CONSIDERED: N.D.C.C. §§ 12.1-32-02, 12.1-32-07.1, 12.1-32-07.2.

41 CROSS REFERENCE: N.D.R.Crim.P. Form 8 (Order Deferring Imposition of
42 Sentence).

RULE 32.2. PRETRIAL DIVERSION

(a) Agreements Permitted.

(1) Generally. After due consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the defendant may agree that the prosecution will be suspended for a specified period after which it will be dismissed under Rule 32.2(f) on condition that the defendant not commit a felony, misdemeanor or infraction during the period. The agreement must be in writing and signed by the parties. It must state that the defendant waives the right to a speedy trial. It may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the charge.

(2) Additional Conditions. Subject to the court's approval after due consideration of the victim's views and upon a showing of substantial likelihood that a conviction could be obtained and that the benefits to society from rehabilitation outweigh any harm to society from suspending criminal prosecution, the agreement may specify additional conditions to be observed by the defendant during the period, including:

(A) that the defendant not engage in specified activities, conduct, and associations;

(B) that the defendant participate in, and if appropriate successfully complete, a rehabilitation program, which may include treatment, counseling, training, and education;

(C) that the defendant make restitution in a specified manner for harm or loss

22 caused by the crime charged;

23 (D) that the defendant pay ~~specified~~ to the court fees or costs allowed by law;

24 (E) that the defendant pay to others additional amounts as agreed upon by the
25 parties;

26 ~~(E)~~ (F) that the defendant perform specified community service.

27 (3) Limitations on Agreements. The agreement may not specify a period longer or
28 any condition other than could be imposed upon probation after conviction of the crime
29 charged.

30 (b) Filing of Agreement; Release. Promptly after the agreement is made and
31 approved by the court, the prosecuting attorney shall file the agreement together with a
32 statement that under the agreement the prosecution is suspended for a period specified in
33 the statement. Upon the filing, the defendant must be released under Rule 46 from any
34 custody.

35 (c) Modification of Agreement. Subject to Rule 32.2 (a) and (b) and with the
36 court's approval, the parties by mutual consent may modify the terms of the agreement at
37 any time before its termination.

38 (d) Termination of Agreement; Resumption of Prosecution.

39 The court may order the agreement terminated and the prosecution resumed if, upon
40 motion of the prosecuting attorney stating facts supporting the motion and upon hearing,
41 the court finds:

42 (1) the defendant or defense counsel misrepresented material facts affecting the

43 agreement, if the motion is made within six months after the date of the agreement; or

44 (2) the defendant has committed a violation of the agreement, if the motion is
45 made not later than one month after the expiration of the period of suspension specified in
46 the agreement.

47 (e) Emergency Order. The court by warrant may direct any officer authorized by
48 law to bring the defendant before the court for the hearing of the motion if the court finds
49 from affidavit or testimony:

50 (1) there is probable cause to believe the defendant committed a violation of the
51 agreement; and

52 (2) there is a substantial likelihood that the defendant otherwise will not attend the
53 hearing. In any case the court may issue a summons instead of a warrant to secure the
54 appearance of the defendant at the hearing.

55 (f) Termination of Agreement; Dismissal. If no motion by the prosecuting attorney
56 to terminate the agreement is pending, the agreement is terminated and the complaint,
57 indictment, or information must be dismissed by order of the court 60 days after
58 expiration of the period of suspension specified by the agreement. If such a motion is then
59 pending, the agreement is terminated and the complaint, indictment, or information must
60 be dismissed by order of the court upon entry of a final order denying the motion.

61 Following a dismissal under Rule 32.2(f) the defendant may not be further prosecuted for
62 the offense involved.

63 (g) Modification or Termination and Dismissal upon Defendant's Motion. If, upon

64 motion of the defendant and hearing, the court finds that the prosecuting attorney
65 obtained the defendant's consent to the agreement as a result of a material
66 misrepresentation by a person covered by the prosecuting attorney's obligation under Rule
67 16, the court may:

68 (1) order appropriate modification of the terms resulting from the
69 misrepresentation; or

70 (2) if the court determines that the interests of justice require, order the agreement
71 terminated, dismiss the prosecution, and bar further prosecution for the offense involved.

72 (h) Pre-Charge Diversion. This rule does not preclude the prosecuting attorney and
73 defendant from agreeing to diversion of a case without court approval if charges are not
74 pending before the court.

75 EXPLANATORY NOTE

76 ~~Rule 32.2 was amended, effective March 1, 2013.~~

77 Rule 32.2 was adopted March 1, 2009. Amended effective March 1,
78 2013; _____.

79 Rule 32.2 is patterned after Minn.R.Crim.P. 27.05.

80 ~~Subdivision Paragraph~~ (a)(2)(D) was amended, effective March 1, 2013, to include
81 payment of fees or costs as ~~an additional~~ a condition to a pretrial diversion agreement.

82 The paragraph was further amended, effective _____, to specify that fees or costs
83 allowed under the law are to be paid to the court.

84 A new paragraph (a)(2)(E) was added, effective _____, to allow

85 the parties to agree that the defendant pay additional amounts to others as a condition of a
86 pretrial diversion agreement.

87 Sources: Joint Procedure Committee Minutes of January 25, 2018, pages 8-11;
88 September 30, 2011, pages 19-20; October 11-12, 2007, pages 15-20; April 26-27, 2007,
89 pages 23-27.

90 STATUTES AFFECTED:

91 CONSIDERED: N.D.C.C. ch. 29-01

92 CROSS REFERENCE: N.D.Sup.Ct.Admin.R. 41 (Access to Court Records).

RULE 35. CORRECTING OR REDUCING A SENTENCE

(a) Correction of Sentence.

(1) Illegal Sentence. The sentencing court ~~may~~ has jurisdiction to correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided for reduction of sentence in Rule 35(b)(1).

(2) Clear Error. After giving any notice it considers appropriate, the sentencing court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) Reduction of Sentence.

(1) Time for Reduction. The sentencing court may reduce a sentence:

(A) within 120 days after the court imposes sentence or revokes probation; or

(B) within 120 days after the court receives the mandate issued upon affirmance of the judgment or dismissal of the appeal; or

(C) within 120 days after the Supreme Court of the United States enters any order or judgment denying review of, or having the effect of upholding a judgment of conviction or probation revocation.

(2) Motion for Reduction. On a party's motion or on its own, and with notice to the parties, the court may grant a sentence reduction. Changing a sentence from a sentence of incarceration to a grant of probation is a permissible sentence reduction. If the sentencing court grants a sentence reduction, it must state its reasons for the reduction in writing.

22 EXPLANATORY NOTE

23 Rule 35 was amended, effective January 1, 1979; September 1, 1983; March 1,
24 1986; March 1, 2006;_____.

25 Rule 35 is derived from Fed.R.Crim.P. 35. One modification in language is the
26 addition of the word "sentencing" to modify court. This clarifies that only the court which
27 rendered judgment may correct an illegal sentence.

28 The rule encompasses two forms of relief: reduction of sentence, and correction of
29 sentence illegal in form or manner of imposition or given in error. Under the rule: (1) it is
30 presupposed that the conviction upon which the sentence has been imposed is valid; (2)
31 the court is empowered to act on its own motion; and (3) the court is prohibited from
32 acting during the pendency of an appeal.

33 A motion under the rule is essentially a plea for leniency and presupposes a valid
34 conviction. Rule 35 motion presupposes a valid conviction only for purposes of a hearing
35 on that motion and does not preclude an appeal by a defendant from the conviction. A
36 motion under this rule is addressed to the discretion of the sentencing court and may be
37 granted if the court decides that the sentence originally imposed, for any reason, was
38 unduly severe.

39 Ordinarily a court is not required to hear testimony or arguments on a motion for
40 reduction of sentence. This is discretionary with the court. If the court does decide to
41 reduce the sentence, the defendant need not be present nor need he be allowed to make a
42 statement in his behalf before the reduced sentence is imposed. A motion for reduction of

43 sentence must comply with Rule 47, but in the case of pro se requests by prisoners, the
44 court will entertain the request although contained in an informal letter from the prisoner
45 to the sentencing judge.

46 The clearest instance of illegality in a sentence is where the court imposes a
47 sentence in excess of the maximum term authorized under the statute violated. An
48 excessive sentence is void only as to the excess and is to be corrected, not by absolute
49 discharge of or new trial for the prisoner, but by an appropriate amendment to the invalid
50 sentence by the court of original jurisdiction. A sentence by a court having jurisdiction of
51 the person and the offense committing a person to an authorized penal institution but for a
52 term in excess of what the law permits is not void as to the period of lawful imposition,
53 but void only as to the excess beyond that which could have been lawfully imposed.

54 It should be noted that the period is not defined as the time in which the motion
55 may be made, but is rather the time in which the court may act. If a court fails to act upon
56 a motion in the allotted time, this precludes relief. The trial court is not required to state
57 its reason for denying a motion for reduction of sentence.

58 Rule 35 was amended, effective January 1, 1979, to require that notice of a motion
59 for correction or reduction of sentence be given to the parties in accordance with Rule 49,
60 whether the court acts on its own motion or a motion filed by a party. If the court grants
61 relief under this rule, it must give its reasons in writing.

62 Rule 35 was amended, effective September 1, 1983, to track amendments to the
63 federal rule creating two subdivisions and inserting a new sentence in subdivision (b)

64 providing that "changing a sentence from a sentence of incarceration to a grant of
65 probation constitutes a permissible reduction of sentence under this subdivision."

66 Subdivision (a) was amended, effective March 1, 2006, to add a new paragraph (2)
67 giving the sentencing court discretion to correct a clear error in a sentence.

68 Subdivision (a) was amended, effective _____, to clarify that a court has
69 jurisdiction to correct an illegal sentence at any time.

70 Subdivision (b) was amended, effective March 1, 1986, to follow the 1983
71 amendment to the federal rule and clarify that the sentencing court may reduce a sentence
72 within 120 days after either the sentence is imposed or probation is revoked.

73 Rule 35 was amended, effective March 1, 2006, in response to the December 1,
74 2002, revision of the Federal Rules of Criminal Procedure. The language and
75 organization of the rule were changed to make the rule more easily understood and to
76 make style and terminology consistent throughout the rules.

77 SOURCES: Joint Procedure Committee Minutes of September 28, 2017, pages 21-
78 22; January 27-28, 2005, pages 31-32; June 22, 1984, page 26; April 26, 1984, page 10;
79 October 15-16, 1981, page 11; January 12-13, 1978, pages 9-11; October 27-28, 1977,
80 pages 9-11; September 15-16, 1977, pages 26-27; June 2-3, 1977, pages 11-12; December
81 11-15, 1972, pages 20-24; September 26-27, 1968, page 18; Fed.R.Crim.P. 35.

82 STATUTES AFFECTED:

83 CONSIDERED: N.D.C.C. § 12-06-08, ch. 12-53 except section 12-53-15, which is
84 superseded by N.D.R.Crim.P. 32; N.D.C.C. §§ 12.1-32-06(2), 29-26-03, 29-26-05,

85 29-26-06, 29-26-07, 29-26-09, 29-26-10, 29-26-11, 29-26-12, 29-26-13, 29-26-14,
86 29-26-16, 29-26-17, 29-26-18, 29-26-20, 29-26-21, 29-26-22, 29-26-22.1, 29-26-22.2,
87 29-26-23, 29-26-24, 40-18-13.

88 CROSS REFERENCE: N.D.R.Crim.P. 47 (Motions); N.D.R.Crim.P. 49 (Serving
89 and Filing Documents).

RULE 25. FILING AND SERVICE

(a) Filing.

(1) Filing with the Clerk. A document required or permitted to be filed in the supreme court must be filed with the clerk of the supreme court.

(2) Filing: Method and Timeliness.

(A) In general. Filing may be accomplished by mail or delivery addressed to the clerk or by electronic means as provided in these rules, but filing is not timely unless the clerk receives the documents within the time fixed for filing. If a document submitted for filing is rejected, the time for filing is tolled from the time of submission to the time the rejection notice is sent. A corrected document will be considered timely filed if submitted and served within three days after the notice of rejection is sent.

(B) Brief, appendix, transcript or petition for rehearing. A brief, appendix, transcript, or petition for rehearing is considered filed on the day of electronic filing, or mailing or deposit with a third-party commercial carrier.

(C) Electronic filing. Documents ~~may~~ must be filed by electronic means to the extent provided and under procedures established in these rules. 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. A document filed by electronic means in compliance with these rules constitutes a written document for the purpose of applying these rules.

22 (i) Documents, except an appendix, may be filed electronically with the clerk of
23 the supreme court by facsimile only if e-mail submission is not possible.

24 (ii) The typed attorney or party name or facsimile signature on a document filed
25 electronically has the same effect as an original manually affixed signature.

26 (iii) A document in compliance with these rules and submitted electronically to the
27 clerk of the supreme court by 11:59 p.m. Bismarck, North Dakota, time is considered
28 filed on the date submitted. Upon receiving an electronic document, the clerk of the
29 supreme court will issue an e-mail confirmation that the document has been received.

30 ~~(iv) A party filing a document electronically must pay any docket fee, fee to file~~
31 ~~electronically, or any surcharge for internal reproduction of the document by the supreme~~
32 ~~court.~~

33 ~~a. No payment is required for motions, comments, and other documents less than~~
34 ~~20 pages in length, including appendices or attachments. A party electronically filing a~~
35 ~~motion, comment, or other document must pay \$0.50 per page for each page in excess of~~
36 ~~20 pages. The charges under this subparagraph apply to any attachments, exhibits, or~~
37 ~~appendices that are electronically filed with a motion.~~

38 ~~b. A party electronically filing any brief, whether in an appeal, request for~~
39 ~~supervision, or request for a writ, must pay \$25. No payment is required for a reply brief~~
40 ~~or a petition for rehearing.~~

41 ~~c. No payment is required for an appendix filed 100 pages or less in length. A~~
42 ~~party must pay \$.50 per page for each appendix page in excess of 100 pages.~~

43 ~~(v) A party must pay all required fees and payments within seven days of~~
44 ~~submitting a document filed electronically. If fees and payments are not paid within seven~~
45 ~~days of submission, the document will be returned by the clerk of the supreme court and~~
46 ~~the party will be required to refile the document.~~

47 (3) Electronic Document Formats. All documents submitted to the court in
48 electronic form must be in approved word processing format or portable document format
49 ~~(pdf PDF). Documents filed in PDF format must be directly converted from a word~~
50 ~~processing file, rather than scanned if possible. Documents or parts of documents not~~
51 ~~available in electronic form may be converted to PDF from scanned images. To the extent~~
52 ~~practicable, PDF documents converted from scanned images should be text-searchable.~~
53 ~~Electronically filed documents may not be locked, password protected, or contain~~
54 ~~embedded files or scripts.~~

55 (A) Approved word processing formats for documents submitted in electronic
56 form are WordPerfect, Word, and ASCII. Parties must obtain permission from the clerk
57 of the supreme court in advance if they seek to submit documents in another word
58 processing format.

59 (B) Hard page breaks must separate the cover, table of contents, table of cases, and
60 body of approved word processing format briefs.

61 (C) An appendix may be filed electronically in portable document format (pdf
62 PDF). Except for limited excerpts showing a court's reasoning, district court transcripts
63 that have been filed electronically with the supreme court may not be included in an

64 appendix filed electronically.

65 (4) Filing Motion with Justice. If a motion requests relief that may be granted by a
66 single justice, the justice may receive the motion for filing; the justice must note the filing
67 date on the motion and give it to the clerk.

68 (5) Filing with the Clerk. Any document filed with the clerk of the supreme court
69 by e-mail by the district court or counsel must be sent to the following e-mail address:
70 supclerkofcourt@ndcourts.gov.

71 (b) Service of All Documents Required. Unless a rule requires service by the clerk,
72 a party must, at or before the time of filing a document, serve a copy on the other parties
73 to the appeal or review. Service on a party represented by counsel must be made on the
74 party's counsel.

75 (c) Manner of Service.

76 (1) Service may be any of the following:

77 (A) personal, including delivery to a clerk or a responsible person at the office of
78 counsel;

79 (B) by mail;

80 (C) by third-party commercial carrier for delivery within three days; or

81 (D) by electronic means.

82 (2) When reasonable, considering such factors as the immediacy of the relief
83 sought, distance and cost, service on a party must be by a manner at least as expeditious
84 as the manner used to file the document with the court. If a party files a document by

85 electronic means, the party must serve the document by electronic means unless the
86 recipient of service cannot accept electronic service.

87 (3) Service by mail is complete upon mailing. Service via a third-party commercial
88 carrier is complete upon deposit of the document to be served with the commercial
89 carrier. Service by electronic means is complete on transmission, unless the party making
90 service is notified that the document was not received by the party served.

91 (4) Electronic Service.

92 (A) If a party files a document by electronic means, the party must serve the
93 document by electronic means unless the recipient of service cannot accept documents
94 served electronically.

95 (B) Attorneys appearing before or filing with the supreme court must provide an
96 e-mail address to the court and must accept electronic service. Attorneys may designate a
97 law firm e-mail address as their e-mail address for the purpose of accepting electronic
98 service. If the recipient's e-mail address is published on the supreme court's website or
99 known to a party, the document must be served by electronic means to that e-mail
100 address.

101 (C) Documents served electronically may be served by facsimile only if e-mail
102 service is not possible and only if prior permission to serve by facsimile is granted by the
103 recipient.

104 (D) If a recipient cannot accept electronic service of a document, service under
105 another means specified by N.D.R.App.P. 25(c) is required.

106 (d) Proof of Service. A document presented for filing must contain an
107 acknowledgment of service by the person served or proof of service by the person who
108 made service. Proof of service may appear on or be affixed to the document filed. The
109 clerk may permit a document to be filed without acknowledgment or proof of service but
110 must require acknowledgment or proof of service to be filed promptly.

111 EXPLANATORY NOTE

112 Rule 25 was amended, effective January 1, 1988; on an emergency basis,
113 September 5, 1990; on an emergency basis, November 16, 1994; March 1, 1996; March 1,
114 1999; March 1, 2003; March 1, 2008; March 1, 2011; October 1, 2014;_____.

115 This rule is derived from Fed.R.App.P. 25. Rule 25 was amended, effective March
116 1, 1999, to allow the use of a third-party commercial carrier as an alternative to the Postal
117 Service. The phrase "commercial carrier" is not intended to encompass electronic delivery
118 services.

119 Subdivision (a) provides documents are not considered filed until they are received
120 by the clerk of the supreme court. Briefs, appendices, transcripts, and petitions for
121 rehearing are exceptions to this general rule.

122 Subparagraph (a)(2)(C), effective March 1, 2003, allows the court to accept
123 documents filed by electronic means.

124 Subparagraph (a)(2)(C) was amended, effective _____ to
125 require electronic filing by all parties other than self-represented litigants and prisoners
126 and to eliminate fees that applied specifically to electronic filing.

127 Paragraph (a)(3) was amended, effective to add
128 requirements for documents filed electronically.

129 Subdivisions (a) and (c) were amended, effective October 1, 2014, to incorporate
130 N.D. Sup. Ct. Admin. Order 14 and to conform the rule to electronic filing. N.D. Sup. Ct.
131 Admin. Order 14 was repealed, effective October 1, 2014.

132 Subdivision (c) was amended, effective March 1, 2008, to provide for service by
133 electronic means.

134 Subparagraph (c)(1)(C) was amended, effective March 1, 2011, to change the
135 reference from "calendar days" to "days."

136 Subdivision (d) allows proof of service by admission of service, affidavit of
137 service, or certificate of an attorney.

138 Rule 25 was amended, effective March 1, 2003, in response to the December 1,
139 1998, amendments to Fed. R. App. P. 25. The language and organization of the rule were
140 changed to make the rule more easily understood and to make style and terminology
141 consistent throughout the rules.

142 Rule 25 was amended, effective October 1, 2014, to replace "supreme court clerk"
143 with "clerk of the supreme court" and "paper" with "document."

144 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 2-4;
145 January 25, 2018, pages 11-12; September 26, 2013, page 22-24; April 29-30, 2010, page
146 20; January 25, 2007, page 17; April 25-26, 2002, pages 3-5; April 26-27, 2001, page 10;
147 April 30-May 1, 1998, page 3; January 29-30, 1998, page 21; January 26-27, 1995, pages

148 6-7; September 29-30, 1994, page 12; February 19-20, 1987, pages 6-7; September 18-19,
149 1986, pages 14-15; May 25-26, 1978, page 10; March 16-17, 1978, pages 3-4.

150 Fed.R.App.P. 25.

151 STATUTES AFFECTED:

152 SUPERSEDED: N.D.C.C. § 28-27-05.

153 CROSS REFERENCE: N.D.R.App.P. 10 (The Record on Appeal); N.D.R.App.P.

154 26(c) (Computing and Extending Time).

RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER DOCUMENTS

(a) Form of a Brief.

(1) Reproduction.

(A) A brief must be typewritten, printed, or reproduced by any process that yields a clear black image on white paper. Only one side of a paper may be used.

(B) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. If filed electronically, documents must be submitted in the same form as if submitted by mail, by third-party commercial carrier, i.e. color. Notice to the clerk of the supreme court must be given of anything other than black and white printed documents.

(2) Cover. The cover of the appellant's brief must be blue; the appellee's red; an intervenor's or amicus curiae's green; a cross-appellee's and any reply brief gray. Covers of petitions for rehearing must be the same color as the petitioning party's principal brief. If the brief is filed electronically, the supreme court will affix the correct color cover. The front cover of a brief must contain:

(A) the number of the case;

(B) the name of the court;

(C) the title of the case (see Rule 3(d)) ;

(D) the nature of the proceeding (e. g. , Appeal from Summary Judgment) and the name of the court, agency, or board below;

22 (E) the title of the brief, identifying the party or parties for whom the brief is filed;

23 (F) the name, bar identification number, office address, and telephone number of
24 counsel representing the party for whom the brief is filed.

25 (3) Binding. The brief must be bound at the left in a secure manner that does not
26 obscure the text and permits the brief to lie reasonably flat when open. If the brief is filed
27 electronically, the supreme court will bind the brief.

28 (4) Paper Size, Line Spacing, and Margins. The brief must be on 8½ by 11 inch
29 paper. Margins must be at least one and one-half inch at the left and at least one inch on
30 all other sides. Pages must be numbered at the bottom, either centered or at the right side.

31 (5) Typeface. Either a proportionally spaced or a monospaced face may be used.

32 (A) A proportionally spaced face must be 12 point or larger with no more than 16
33 characters per inch. The text must be double-spaced, except quotations may be
34 single-spaced and indented. Headings and footnotes may be single-spaced and must be in
35 the same typeface as the text.

36 (B) A monospaced face must be a 12-point font having ten characters per inch.
37 The text, including quotations and footnotes, must be double-spaced with no more than
38 27 lines of type per page. Headings and footnotes must be in the same typeface as the
39 text.

40 (6) Type Styles. A brief must be set in a plain, roman style, although italics or
41 boldface may be used for emphasis. Case names must be italicized or underlined.

42 (7) Paragraph Numbers. Paragraphs must be numbered using arabic numerals in

43 briefs. Reference to material in any document that contains paragraph numbers must be to
44 the paragraph number.

45 (8) Page and Type-Volume Limitations.

46 (A) Word Limit for Proportional Typeface. If proportionately spaced typeface is
47 used, a principal brief may not exceed 8,000 words, and a reply brief may not exceed
48 2,000 words, ~~excluding words in the table of contents, the table of citations, and any~~
49 ~~addendum. Footnotes must be included in the word count.~~

50 (B) Page Limit for Monospaced Typeface. If monospaced typeface is used, a
51 principal brief may not exceed 32 pages, and a reply brief may not exceed eight pages;
52 ~~excluding the table of contents, the table of citations, and any addendum.~~

53 (C) Word and Page Limit for N.D.R.Civ.P. 54(b) Certification. If proportionately
54 spaced typeface is used, an argument on the appropriateness of N.D.R.Civ.P. 54(b)
55 certification may not exceed 1,250 words. If monospaced typeface is used, an argument
56 may not exceed five pages. Word and page limits for Rule 54(b) certification are in
57 addition to the limits set forth in (7)(A) and (7)(B).

58 (D) Exclusions. In computing any length limit, headings, footnotes, and quotations
59 count toward the limit but the following items do not:

60 (i) table of contents;

61 (ii) table of citations;

62 (iii) any addendum;

63 (iv) paragraph numbers;

64 (v) signature block;

65 (vi) certificate of compliance; and

66 (vii) cover page.

67 (b) Form of an Appendix. An appendix must comply with Rule 25 and paragraphs

68 (a) (1), (2), (3), and (4), with the following exceptions:

69 (1) the cover of a separately bound appendix must be white;

70 (2) an appendix may include a legible photocopy of any document found in the
71 record;

72 (3) pages in the appendix must be consecutively numbered;

73 (4) an appendix may be prepared with double sided pages.

74 The appendix must be 8 ½ by 11 inches in size. Documents of a size other than 8
75 ½ by 11 inches may be included in the appendix but must be folded or placed in a file or
76 folder within the 8 ½ by 11 inch appendix.

77 (c) Form of Other Documents.

78 (1) All paragraphs must be numbered in documents filed with the court except for
79 exhibits, documents prepared before the action was commenced, or documents not
80 prepared by the parties or court. Reference to material in any document that contains
81 paragraph numbers must be to the paragraph number.

82 (2) Motion. Rule 27 governs motion content. The form of all motion documents
83 must comply with the requirements of paragraph (c) (4) below.

84 (3) Petition for Rehearing. Rule 40 governs petition for rehearing content.

85 (4) Other Documents. Any other document must be reproduced in the manner
86 prescribed by subdivision (a) , with the following exceptions:

87 (A) a cover is not necessary if the caption and signature page together contain the
88 information required by subdivision (a); and

89 (B) Paragraph (a) (8) does not apply.

90 (d) Non-compliance. Documents not in compliance with this rule will not be filed.

91 (e) Certificate of Compliance. A brief must include a certificate by the attorney, or
92 an unrepresented party, that the document complies with the type-volume limitation. The
93 person preparing the certificate may rely on the word or page count of the
94 word-processing system used to prepare the document. The certificate must state the
95 number of words—or the number of pages of monospaced type—in the document.

96 EXPLANATORY NOTE

97 Rule 32 was amended, effective March 1, 1996; amended effective September 11,
98 1996, subject to comment; final adoption on October 23, 1996; amended effective August
99 1, 2001; March 1, 2003; March 1, 2007; March 1, 2008; March 1, 2010; March 1, 2013;
100 October 1, 2014; March 1, 2017; March 1, 2018;_____.

101 Rule 32 was amended, effective September 11, 1996, with respect to the allowable
102 characters per inch with proportionally spaced typeface in subparagraph (a) (5) (A).

103 Rule 32 was revised, effective March 1, 2003, in response to the December 1, 1998,
104 amendments to Fed.R.App.P. 32. The language and organization of the rule were changed
105 to make the rule more easily understood and to make style and terminology consistent

106 throughout the rules.

107 Paragraph (a) (2) was amended, effective March 1, 2007, to specify the cover color
108 for a petition for rehearing.

109 Paragraph (a) (3) , effective March 1, 2003, requires a brief to be bound in a secure
110 manner, however, this is not intended to allow staples or slide-lock or slide-grip bindings.

111 Paragraphs (a) (6) and (a) (7) , which include type style requirements and page and
112 type-volume limitations, were adopted, effective March 1, 2003. These limitations were
113 moved to this rule from Rule 28 and generally do not follow the federal format
114 requirements. As used in paragraph (a) (6) , "plain, roman style" does not include
115 italicized, bold, or cursive type-styles.

116 Paragraph (a)(7) was amended, effective March 1, 2018, to specify that paragraphs
117 must be numbered using arabic numerals.

118 Paragraph (a) (8) was amended, effective March 1, 2013, to decrease the page and
119 type volume allowed in a primary brief and a response brief.

120 Paragraph (a) (8) , effective March 1, 2003, limits the length of a brief. A person
121 may rely on the word or line count of the word-processing system used to prepare the
122 brief.

123 Subparagraph (a) (8) (C) was adopted, effective March 1, 2010, to limit the length
124 of an argument on the appropriateness of N.D.R.Civ.P. 54(b) certification.

125 Subparagraph (a) (8) (D) was adopted, effective _____, to add a list of
126 items excluded in computing the document length.

127 Subdivision (a) was amended, effective October 1, 2014, to conform the rule to
128 electronic filing.

129 Paragraph (b) (2) was amended, March 1, 2017, to clarify that an appendix may
130 include copies of documents found in the record.

131 Paragraph (b) (3) , effective March 1, 2003, provides an exception to the size
132 requirement for odd-sized documents in an appendix. This exception is intended to allow
133 inclusion of technical or other documents, such as maps or charts, which may not be clear
134 or legible if reduced to meet the size requirement.

135 Paragraph (c) (2) , was amended, effective March 1, 2008, to transfer length
136 requirements for petitions for rehearing to Rule 40.

137 Subdivision (c) was amended, effective October 1, 2014, to clarify that paragraph
138 numbers are required in all documents submitted to the court unless a specified exception
139 applies.

140 Subdivision (e) was adopted, effective _____ to create a certificate of
141 compliance requirement.

142 Rule 32 was amended, effective October 1, 2014, to replace "supreme court clerk"
143 with "clerk of the supreme court" and "paper" with "document."

144 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 8-10;
145 January 26-27, 2017, page 30; January 28-29, 2016, page 8; September 26, 2013, pages
146 27-28; January 26-27, 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29,
147 2011, page 18-20; September 24-25, 2009, pages 15-16; April 26-27, 2007, page 18;

148 January 25, 2007, page 19; September 22-23, 2005, page 27; January 24-25, 2002, pages
149 7-9; September 27-28, 2001, pages 23-25; April 26-27, 2001, page 9; April 27-28, 1995,
150 pages 15-17; May 25-26, 1978, pages 17-18; January 12-13, 1978, pages 20-22.
151 Fed.R.App.P. 32,3. 13(e) and 3. 31, ABA Standards Relating to Appellate Courts
152 (Approved Draft, 1977).

153 STATUTES AFFECTED:

154 SUPERSEDED: N.D.C.C. § 29-28-19.

155 CROSS REFERENCE: N.D.R.App.P. 27 (Motions) ; N.D.R.App.P. 28 (Briefs) ;
156 N.D.R.App.P. 29 (Brief of an Amicus Curiae) ; N.D.R.App.P. 30 (Appendix to the
157 Briefs) ; N.D.R.App.P. 40 (Petition for Rehearing).

RULE 35.1 SUMMARY DISPOSITION

(a) Affirmance by Summary Opinion. 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~~ supported by findings of fact that ~~are not clearly erroneous~~ meeting the required standard of proof;

(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, 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

22 the appeal, the court may reverse by an opinion citing this rule and the controlling
23 appellate decision.

24 EXPLANATORY NOTE

25 Rule 35.1, N.D.R.App.P. , was adopted effective March 1, 1986; and amended,
26 effective March 1, 1998; March 1, 2003; May 10, 2017; March 1, 2018;

27 _____.

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

30 Paragraph (a)(2) was amended, effective _____, to allow the court to
31 affirm the judgment of the district court based on findings of fact that meet the required
32 standard of proof.

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

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

39 SOURCES: Supreme Court Conference Minutes of September 10, 1985; Joint
40 Procedure Committee Minutes of April 27, 2018, pages 10-11; September 27-28, 2001,
41 pages 12-13; January 30, 1997, page 13; November 29, 1984, pages 9-11.

42 STATUTES AFFECTED:

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

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

45 Review).

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;

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

24 (C) accurately reflects the witness's knowledge.

25 If admitted, the record may be read into evidence but may be received as an exhibit
26 only if offered by an adverse party.

27 (6) Records of a Regularly Conducted Activity. A record of an act, event,
28 condition, opinion, or diagnosis if:

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

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

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

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

36 (E) the opponent does not show that the source of information or the method or
37 circumstances of preparation indicate a lack of trustworthiness.

38 (7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter
39 is not included in a record described in paragraph (6) if:

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

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

42 (C) the opponent does not show that the possible source of the information or other

43 circumstances indicate a lack of trustworthiness.

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

45 (A) it sets out:

46 (i) the office's activities;

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

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

51 (B) the opponent does not show that the source of information or other
52 circumstances indicate a lack of trustworthiness.

53 Before offering factual findings in evidence under this exception, a party must
54 provide the opposing party a copy of the findings, or the portion that relates to the
55 controversy. The opposing party may cross-examine under oath the person who prepared
56 a record, statement or factual findings submitted under this exception, or any person
57 furnishing information recorded in the record, statement or findings. If the person is
58 unavailable for cross-examination, the record, statement, or findings may be admitted
59 under this exception unless the court decides the opposing party would be prejudiced
60 unfairly.

61 (9) Public Records of Vital Statistics. A record of a birth, fetal death, death, or
62 marriage, if reported to a public office in accordance with a legal duty.

63 (10) Absence of a Public Record. Testimony, or a certification under Rule 902,

64 that a diligent search failed to disclose a public record or statement if:

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

66 (i) the record or statement does not exist; or

67 (ii) a matter did not occur or exist, if a public office regularly kept a record or
68 statement for a matter of that kind; and

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

73 (11) Records of Religious Organizations Concerning Personal or Family History.

74 A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood
75 or marriage, or similar facts of personal or family history, contained in a regularly kept
76 record of a religious organization.

77 (12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of
78 fact contained in a certificate:

79 (A) made by a person who is authorized by a religious organization or by law to
80 perform the act certified;

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

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

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

88 (14) Records of Documents That Affect an Interest in Property. The record of a
89 document that purports to establish or affect an interest in property if:

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

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

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

94 (15) Statements in Documents That Affect an Interest in Property. A statement
95 contained in a document that purports to establish or affect an interest in property if the
96 matter stated was relevant to the document's purpose, unless later dealings with the
97 property are inconsistent with the truth of the statement or the purport of the document.

98 (16) Statements in Ancient Documents. A statement in a document that ~~is at least~~
99 ~~20 years old~~ was prepared before January 1, 1998, and whose authenticity is established.

100 (17) Market Reports and Similar Commercial Publications. Market quotations,
101 lists, directories, or other compilations that are generally relied on by the public or by
102 persons in particular occupations.

103 (18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement
104 contained in a treatise, periodical, or pamphlet if:

105 (A) the statement is called to the attention of an expert witness on

106 cross-examination or relied on by the expert on direct examination; and

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

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

110 (19) Reputation Concerning Personal or Family History. A reputation among a
111 person's family by blood, adoption, or marriage, or among a person's associates or in the
112 community, concerning the person's birth, adoption, legitimacy, ancestry, marriage,
113 divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or
114 family history.

115 (20) Reputation Concerning Boundaries or General History. A reputation in a
116 community, arising before the controversy, concerning boundaries of land in the
117 community or customs that affect the land, or concerning general historical events
118 important to that community, state, or nation.

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

121 (22) Judgment of a Previous Conviction. Evidence of a final judgment of
122 conviction if:

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

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

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

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

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

131 (23) Judgments Involving Personal, Family, or General History, or a Boundary. A
132 judgment that is admitted to prove a matter of personal, family, or general history, or
133 boundaries, if the matter:

134 (A) was essential to the judgment; and

135 (B) could be proved by evidence of reputation.

136 (24) Child's statement about sexual abuse. A statement by a child under the age of
137 12 years about sexual abuse of that child or witnessed by that child if:

138 (A) the trial court finds, after hearing on notice in advance of the trial of the sexual
139 abuse issue, that the time, content, and circumstances of the statement provide sufficient
140 guarantees of trustworthiness; and

141 (B) the child either:

142 (i) testifies at the trial; or

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

145 (25) [Other Exceptions.] [Transferred to Rule 807]

146 EXPLANATORY NOTE

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

148 March 1, 2016;_____.

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

150 The last two sentences in paragraph (8) were derived from Sections 31-09-11 and
151 31-09-12, NDCC, which were superseded by these rules.

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

155 Paragraph (22) provides in certain instances, evidence of a previous final judgment
156 comes within a hearsay exception. The paragraph differs from its federal counterpart. The
157 federal exception for pleas of nolo contendere has been deleted as that plea is not used in
158 the state courts of North Dakota. The paragraph also was changed by adding
159 post-conviction proceedings, like appeals, do not affect the admissibility of previous
160 convictions.

161 It should also be noted these exceptions remove only the hearsay objection to
162 evidence. Evidence of a past conviction sought to be introduced under paragraph (22)
163 must also meet the requirements of N.D.R.Ev. 609.

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

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

171 Rule 803 was amended, effective March 1, 2014, in response to the December 1,
172 2011, revision of the Federal Rules of Evidence. The language and organization of the
173 rule were changed to make the rule more easily understood and to make style and
174 terminology consistent throughout the rules.

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

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

181 Paragraph (10) was amended, effective March 1, 2016, to follow the December
182 2013 amendments to Fed.R.Crim.P. 803. The amendment is intended to require a "notice
183 and demand" procedure in criminal cases if the prosecution intends to introduce evidence
184 by certificate.

185 Paragraph (16) was amended, effective _____, to limit application of the
186 ancient document exception to documents prepared before January 1, 1998. A document
187 is "prepared" when the statement proffered was recorded in that document. For example,
188 if a hardcopy document is prepared in 1995, and a party seeks to admit a scanned copy of
189 that document, the date of preparation is 1995 even though the scan was made long after

190 that – the subsequent scan does not alter the document. The relevant point is the date on
191 which the information is recorded, not when the information is prepared for trial.
192 However, if the content of the document is itself altered after the cut-off date, then the
193 hearsay exception will not apply to statements that were added in the alteration.

194 SOURCES: Supreme Court Conference Minutes of October 23 and 25, 1989 [Rule
195 803 (24)]. Joint Procedure Committee Minutes of January 25, 2018, pages 12-13; April
196 23-24, 2015, pages 27-28; January 29-30, 2015, pages 23-24; April 25-26, 2013, pages
197 18-21; January 31-February, 2013, pages 23-24; September 27, 2012, page 22; Rule
198 803(25), September 24-25, 1998, page 4; April 30-May 1, 1998, page 16; Rule 803(24),
199 April 20, 1989, pages 6-8; March 24, 1988, pages 2-6 and 15-16; December 3, 1987,
200 pages 6-7; May 21, 1987, pages 6-7; Rule 803(5)(18)(19)(21)(25), December 3, 1987,
201 pages 15-16; Rule 803, June 3, 1976, page 15; Rule 803(1), (2), January 29, 1976, page
202 19; Rule 803(3), January 29, 1976, page 19; October 1, 1975, page 7; Rule 803(4), (5),
203 January 29, 1976, page 19; Rule 803(6), January 29, 1976, page 20; Rule 803(7), January
204 29, 1976, page 20; October 1, 1975, page 7; Rule 803(8), January 29, 1976, page 21;
205 October 1, 1975, page 7; Rule 803(9), (10), (12), (13), (14), (15), (16), (17), (18), (20),
206 (21), January 29, 1976, pages 21-23; Rule 803(11), June 3, 1976, page 15; January 29,
207 1976, page 22; Rule 803(19), June 3, 1976, page 15; January 29, 1976, page 23; Rule
208 803(22), January 29, 1976, pages 23, 24; October 1, 1975, page 7; Rule 803(23), January
209 29, 1976, page 24; Rule 803(24), April 8, 1976, pages 8a, 9; January 29, 1976, page 24.
210 Fed.R.Ev. 803; Rule 803, SBAND proposal.

211 STATUTES AFFECTED:

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

213 CONSIDERED: N.D.C.C. §§ 2-06-05, 4-22-15, 6-03-32, 6-08-10, 10-04-19,

214 10-15-08, 11-11-38, 11-13-08, 11-15-16, 11-18-09, 11-20-01, 11-20-05, 11-20-13,

215 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,

216 31-04-06, 31-08-01, 31-08-02, 31-08-05, 32-19-26, 32-25-03, 32-25-04, 35-21-05,

217 35-22-11, 35-22-16, 39-20-07, 40-01-10, 40-02-12, 40-04-06, 40-11-08, 40-16-09,

218 41-03-66, 42-02-07, 43-01-21, 43-01-22, 43-06-07, 43-07-13, 40-10-07, 43-11-10,

219 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,

220 47-19-06, 47-19-12, 47-19-23, 47-19-24, 47-19-45, 49-01-14, 49-06-14, 49-19-16,

221 57-38-46, 61-03-06, 61-04-25, 61-05-19, 61-16-06.

222 Cross Reference: N.D.R.Ev. 609 (Impeachment by Evidence of a Criminal

223 Conviction); N.D.R.Ev. 807 (Residual Exception); N.D.R.Crim.P. 11 (Pleas);

224 N.D.R.Crim.P. 12 (Pleadings and Pretrial Motions).

RULE 902. EVIDENCE THAT IS SELF-AUTHENTICATING

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal, or its equivalent, that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and

22 official position of the signer or attester, or of any foreign official whose certificate of
23 genuineness relates to the signature or attestation or is in a chain of certificates of
24 genuineness relating to the signature or attestation. The certification may be made by a
25 secretary of a United States embassy or legation; by a consul general, vice consul, or
26 consular agent of the United States; or by a diplomatic or consular official of the foreign
27 country assigned or accredited to the United States. If all parties have been given a
28 reasonable opportunity to investigate the document's authenticity and accuracy, the court
29 may, for good cause, either:

30 (A) order that it be treated as presumptively authentic without final certification; or

31 (B) allow it to be evidenced by an attested summary with or without final
32 certification.

33 (4) Certified Copies of Public Records. A copy of an official record, or a copy of a
34 document that was recorded or filed in a public office as authorized by law, if the copy is
35 certified as correct by:

36 (A) the custodian or another person authorized to make the certification; or

37 (B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule
38 prescribed by the North Dakota Supreme Court.

39 (5) Official Publications. A book, pamphlet, or other publication purporting to be
40 issued by a public authority.

41 (6) Newspapers and Periodicals. Printed material purporting to be a newspaper or
42 periodical.

43 (7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to
44 have been affixed in the course of business and indicating origin, ownership, or control.

45 (8) Acknowledged Documents. A document accompanied by a certificate of
46 acknowledgment that is lawfully executed by a notary public or another officer who is
47 authorized to take acknowledgments.

48 (9) Commercial Paper and Related Documents. Commercial paper, a signature on
49 it, and related documents, to the extent allowed by general commercial law.

50 (10) Presumptions Under a Statute. A signature, document, or anything else that a
51 statute declares to be presumptively or prima facie genuine or authentic.

52 (11) Certified Domestic Records of a Regularly Conducted Activity. The original
53 or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as
54 shown by a certification of the custodian or another qualified person in the form of an
55 affidavit made under penalty of perjury. Not less than 14 days before the trial or hearing,
56 the proponent must give an adverse party reasonable written notice of the intent to offer
57 the record, and must make the record and certification available for inspection, so that the
58 party has a fair opportunity to challenge them.

59 (12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case,
60 the original or a copy of a foreign record that meets the requirements of Rule 902(11),
61 modified as follows: the certification must be signed in a manner that, if falsely made,
62 would subject the maker to a criminal penalty in the country where the certification is
63 signed. The proponent must also meet the notice requirements of Rule 902(11).

85 intent of these provisions is to allow the foundation for admission of a record of a
86 regularly conducted activity to be established by a certificate made under penalty of
87 perjury rather than by live testimony. Paragraphs (11) and (12) also establish a notice
88 requirement, which is intended to provide an opposing party a fair opportunity to test the
89 adequacy of the foundation provided in the certification.

90 Paragraphs (13) and (14) were added to the rule, effective _____, to
91 provide a means for self-authentication of designated electronic material.

92 Rule 902 was amended, effective March 1, 2014, in response to the December 1,
93 2011, revision of the Federal Rules of Evidence. The language and organization of the
94 rule were changed to make the rule more easily understood and to make style and
95 terminology consistent throughout the rules.

96 SOURCES: Joint Procedure Committee Minutes of January 25, 2018, page 13;
97 April 25-26, 2013, pages 18-21; January 31-February, 2013, pages 23-24; September 27,
98 2012, page 22-24; March 24-25, 1988, pages 15-16; December 3, 1987, page 15; June 3,
99 1976, pages 10-12, 14; October 1, 1975, pages 8, 9. Fed.R.Ev. 902; Rule 902, SBAND
100 proposal.

101 STATUTES AFFECTED:

102 CONSIDERED: N.D.C.C. ch. 31-09; N.D.C.C. §§ 11-18-11, 16-13-11, 31-08-02,
103 31-08-02.1, 31-08-06, 43-13-12.

104 Cross Reference: N.D.R.Ev. 301 (Presumptions in a Civil Case Generally)
105 N.D.R.Ev. 803 (Exceptions to the Rule Against Hearsay Regardless of Whether the

- 106 Declarant is Available as a Witness); N.D.R.Civ.P. 44 (Proving an Official Record);
- 107 N.D.R.Crim.P. 27 (Proof of Official Record).

RULE 3.1 PLEADINGS AND OTHER DOCUMENTS

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

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

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

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

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

22 single copy of any pleading or document.

23 ~~(f)~~ (d) ~~Lost Papers~~ Documents. If any original document is lost or withheld by any
24 person, the court may authorize a copy to be filed.

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

30 ~~(h)~~ (f) Filing After Service. After the complaint is filed, all documents required to
31 be served on a party, together with certificate of service, must be filed with the court
32 within a reasonable time after service. Discovery documents may only be filed as allowed
33 by N.D.R.Civ.P. 5(d)(3).

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

37 ~~(j)~~ (h) Non-Conforming Documents.

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

39 (2) If a non-conforming document is filed by mistake, the court on motion or on its
40 own may order the pleading or other document reformed. If the order is not obeyed, the
41 court may order the document stricken.

42 (3) If a document is stricken, the time for filing is tolled from the time of

43 submission to the time the order striking the document is filed. The document will be
44 considered timely filed if resubmitted in corrected form within three days after the order
45 striking the document is filed.

46 (i) Paper Documents. Paper documents may be filed only as allowed under Rule
47 3.5(a). Except as otherwise permitted by the court, paper documents must be prepared on
48 8 1/2 x 11 inch white paper. Each sheet must be separately numbered and in the proper
49 sequence. Writing may appear on one side of the sheet only and must be double-spaced,
50 except for quoted material. Paper documents must be filed by the clerk flat and unfolded
51 with each set of papers firmly fastened together.

52 EXPLANATORY NOTE

53 Rule 3.1 was amended, effective January 1, 1988; March 1, 1996; March 1, 1999;
54 August 1, 2001; March 1, 2005; March 1, 2007; March 1, 2009; May 1, 2012; March 1,
55 2013; April 15, 2013; March 1, 2014; March 1, 2018; _____.

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

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

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

63 A new subdivision ~~(e)~~ (c) was added, effective March 1, 2005, to clarify that

64 documents must be filed with the clerk. Submitting a document to a judge or to court
65 personnel other than the clerk does not constitute filing. The first version of a given
66 document submitted to the clerk, regardless of what form it is in, will be filed and treated
67 as the original. A party seeking to correct the original or have another document treated as
68 the original must obtain an order from the court.

69 Subdivision ~~(e)~~ (c) was amended, effective March 1, 2014, to clarify that only a
70 single copy of any pleading or document need be filed with the court. This provision
71 supersedes the requirement in N.D.C.C. § 29-15-21 that a demand for change of judge be
72 filed in triplicate and the requirements in N.D.C.C. §§ 14-12.2-36 and 14-14.1-25 for the
73 filing of two copies of an order. This provision should be interpreted as superseding any
74 statutory requirement that multiple copies of a document be filed with the court.

75 Subdivision ~~(h)~~ (f) was amended, effective March 1, 2014, to require, once the
76 complaint has been filed, filing of all documents that must be served, along with a
77 certificate of service, within a reasonable time after service. This provision is modeled
78 after Minn. R. Civ. P. 5.04.

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

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

84 Subdivision ~~(j)~~ (h) was amended, effective March 1, 2018 to provide that the time

85 of filing is tolled pending resubmission of a stricken document.

86 Subdivision (i) was added, effective _____, to consolidate the rule's
87 requirements related to the preparation and filing of paper documents in a single place.

88 The letter designations of the rule's subdivisions were amended accordingly.

89 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 11-12;
90 September 29-30, 2016, page 29; September 26, 2013, pages 7-11; April 25-26, 2013,
91 pages 13-15; September 27, 2012, page 14; January 26-27, 2012, pages 16-17; January
92 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31;
93 September 22-23, 2005, pages 16-17; September 23-24, 2004, pages 3-5; April 29-30,
94 2004, pages 6-13, 17-25; January 29-30, 2004, pages 3-8; September 16-17, 2003, pages
95 2-11; April 24-25, 2003, pages 6-12; January 29-30, 1998, page 22; September 29-30,
96 1994, pages 6-7.

97 STATUTES AFFECTED:

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

100 CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other
101 Papers); N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers;
102 Representations to Court; Sanctions); N.D.R.Ct. 3.4 (Privacy Protection for Filings Made
103 with the Court); N.D.R.Ct. 3.5 (Electronic Filing in the District Courts); N.D.R.Ct.
104 Appendix K (Electronic Filing Requirements); N.D.Sup.Ct.Admin.R. 41 (Access to
105 Judicial Records).

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. All documents in civil, non-juvenile, cases must be filed electronically. 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.

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

(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.

1 (7) A party who electronically files a proposed order must identify the filing party
2 in the Odyssey filing description field.

3 (b) Filing Formats.

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

6 (2) All paragraphs must be numbered using arabic numerals in documents filed
7 electronically. Reference to material in such documents must be to paragraph number, not
8 page number. Paragraph numbering is not required in exhibits, documents that consist of
9 a single paragraph, documents prepared before the action was commenced, or in
10 documents not prepared by the parties or court.

11 (3) A document submitted for electronic filing must comply with published
12 guidelines (N.D.R.Ct. Appendix K Rule 3.5 Electronic Filing Requirements).

13 (c) Time of Filing.

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

18 (2) After reviewing an electronically filed document, the district court clerk must
19 inform the filer, through an e-mail generated by the Odyssey system, whether the
20 document has been accepted or rejected. A notice of rejection must state all provisions of
21 Appendix K or other statute, rule or case relied upon.

1 (3) If a document submitted for electronic filing is rejected, the time for filing is
2 tolled from the time of submission to the time the e-mail generated by the Odyssey system
3 notifying the filer of rejection is sent. The document will be considered timely filed if
4 resubmitted within three days after the notice of rejection.

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

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

12 (e) Electronic Service.

13 (1) All documents filed electronically after the initiating pleadings must be served
14 electronically through the Odyssey system except for documents served on or by
15 self-represented litigants and prisoners. On a showing of exceptional circumstances in a
16 particular case, anyone may be granted leave of court to serve paper documents or to be
17 exempt from receiving electronic service. Attorneys who are required by rule or statute to
18 serve documents on their own clients may serve paper documents.

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

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

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

10 (5) Counsel are required to use the Attorney Subscription Management System for
11 notice of filing by the court in the Odyssey system.

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

15 (g) Filed Electronic Documents. An electronic document filed, accepted and
16 docketed in the Odyssey electronic filing system is a court record. No further proof that
17 the document is a court record is required when the record is distributed between courts
18 or files using the Odyssey system.

19 EXPLANATORY NOTE

20 Adopted effective January 15, 2013; amended effective April 15, 2013; June 1,
21 2013; June 1, 2015; March 1, 2016; March 1, 2017; _____.

1 Rule 3.5 was originally adopted as N.D.Sup.Ct.Admin.O. 16 on March 1, 2006.

2 Order 16 was later amended, effective March 1, 2008; March 1, 2009; August 1, 2010;
3 March 1, 2011; July 1, 2012; March 1, 2018.

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

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

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

16 Paragraph (b)(1) was amended, effective June 1, 2015, to remove Word documents
17 from the list of approved formats for electronic filing in the Odyssey system. If a court
18 requests that parties submit editable documents such as proposed findings or orders,
19 Word or other editable format documents still may be e-mailed to the court for that
20 purpose but only after e-filing the documents in Odyssey in an approved format.

21 Paragraph (b)(2) was amended, effective March 1, 2018, to specify that paragraphs

1 must be numbered using arabic numerals.

2 Paragraph (b)(2) was amended, effective _____, to exclude documents
3 that consist of a single paragraph from the paragraph numbering requirement.

4 Paragraph (b)(3) was added, effective March 1, 2018, to add a reference to
5 Appendix K, which contains document guidelines.

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

8 Subdivision (c) was amended, effective March 1, 2018, to require a notice of
9 document rejection to state all provisions of Appendix K or other statute, rule or case
10 relied upon for the rejection and to delete the requirement to file a notice of resubmission.

11 Paragraph (e)(4) was amended, effective March 1, 2018, to provide that documents
12 served electronically are treated as delivered on the day of transmission.

13 Paragraph (e)(5) was added, effective March 1, 2018, to require counsel to use the
14 Attorney Subscription Management System for notice of filing by the court.

15 Subdivision (g) was added, effective March 1, 2017, to explain that once a document is
16 accepted into the Odyssey system, the document is a court record and no further proof
17 that the document is a court record is needed when the record is distributed between
18 courts or files using the Odyssey system.

19 Sources: Joint Procedure Committee Minutes of April 27, 2018, pages 13-14;
20 September 28, 2017, pages 2-10; April 27, 2017, pages 14-19; January 26-27, 2017, page
21 30; May 12-13, 2016, pages 15-22; January 28-29, 2016, pages 8-11; April 23-24, 2015,

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

27 Statutes Affected:

28 Considered: N.D.C.C. § 28-32-42.

29 Cross References: N.D.R.Ct. 3.1 (Pleadings); N.D.R.Ct. 3.4 (Privacy Protection
30 for Filings Made with the Court); N.D.R.Ct. Appendix K (Electronic Filing
31 Requirements); N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction; Process; Service);
32 N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Documents); N.D. Admission
33 to Practice R. 1 (General Requirements for Admission).

APPENDIX K. RULE 3.5 ELECTRONIC FILING REQUIREMENTS

The filing will be rejected if these guidelines are not followed:

(a) Case Initiation

(1) The document caption and case number must relate to the correct county.

(2) The filing fee must be included with document/proceedings that require a filing fee. The filer must submit with the filing code that includes the proper fee.

(3) Exhibits to pleadings must be filed as separate documents.

(4) All party information, i.e., names of parties and addresses (including attorneys), must be entered within the "Parties" section of File & Serve.

(A) If the information is unknown, specify what is unknown in the filing comments field within the filing details. For example, "Defendant address unknown."

(B) Failure to provide or update a party's address may result in a party not receiving notices from the court, which could result in a delay or possible dismissal of your case. Note - Attorney address information must be updated with the State Board of Law Examiners.

(5) Aliases, such as AKA, DBA, should be included in the caption of the document and must be entered as separate parties in File & Serve. In order to achieve accurate search results in Public Search and Odyssey, when entering a party name, put in only the name of the person or business - do not include "AKA," "FKA," "DBA," "Assignee of ___" as part of the name. The Clerk of Court will update the record to reflect the use of

22 "AKA," "FKA," "DBA," "Assignee of ___".

23 (6) The initiating documents must be filed using the correct case type.

24 (7) The data entry fields for descriptions, party, and attorney information may not
25 be entered in all capital letters.

26 (b) Event Codes/Service

27 (1) Correct event codes must be used. See "What Filing Code Do I Use?" on the
28 File & Serve website for a list of Event Codes and description of when to use them.

29 (2) The Service Document must indicate who was served in the additional filing
30 description. If serving more than three persons, a brief summary of those being served
31 may be used, e.g. all plaintiffs, all defendants, all parties.

32 (3) The Proof of Service documents must be filed as separate documents with
33 complete case heading and case number.

34 (c) Documents

35 (1) Individual documents must be filed separately. For example, documents may
36 not be combined such as Motion & Service Document, Stipulation & Proposed Order,
37 Brief & Exhibits, and Plea Agreement & Proposed Orders.

38 (2) The Notice of Entry of Judgment must identify the docket number and the date
39 the judgment was signed. A copy of the judgment may be attached to the notice of entry
40 of judgment (as one document). See N.D.R.Civ.P. 58(b).

41 (3) The signature line may not be blank. See N.D.R.Ct. 3.5(a)(6).

42 (4) The document must be legible, complete, of adequate quality, and in black and

43 white. Colored or shaded documents may be filed as paper documents if necessary to
44 ensure legibility. See N.D.R.Ct. 3.5(a)(4).

45 (5) The case number must be on the document (leading zeroes are not required).
46 See N.D.R.Ct. 3.1(~~g~~) (e).

47 (6) The document description must correspond to the document filed. Avoid
48 unnecessary abbreviations or acronyms.

49 (7) Correspondence requesting action from the clerk's office (e.g., cover letters
50 indicating documents are enclosed for filing, requests for certified copies, requests for
51 executions.) may not be included.

52 (8) The attorney signature block must include all of the following: the attorney's
53 individual name, address, phone number, service email address, and State Board of Law
54 Examiners Bar identification number. See N.D.R.Ct. 3.1(b).

55 (9) A confidential information form must be filed when a redacted document is
56 filed. See N.D.R.Ct. 3.4(f).

57 (10) All pages in the document must be included and be in the proper sequence.
58 ~~See N.D.R.Ct. 3.1(a).~~

59 (11) All paragraphs must be numbered in documents. Paragraph numbering is not
60 required in exhibits, documents that consist of a single paragraph, documents prepared
61 before the action was commenced, or in documents not prepared by the parties or court.
62 See N.D.R.Ct. 3.5(b)(2).

63 (d) Exhibits

64 (1) The Filing Description field must include a description of what each exhibit
65 contains in addition to the word "Exhibit" and any enumeration such as A or 1. For
66 example, "Exhibit A--Drug Laboratory Report."

RULE 50. COURT INTERPRETER QUALIFICATIONS AND PROCEDURES

SECTION 1. POLICY.

The Judicial System's policy is to ensure that adequate court interpreter services are provided for those persons who are unable to readily understand or communicate in the English language because of a disability or a non-English speaking background. This rule establishes court interpreter qualifications and general procedures to assist in ensuring that effective interpreter services are provided.

SECTION 2. PROVIDING INTERPRETERS.

A. Interpreter at No Cost. A limited English proficiency individual is one whose first language is other than English and who has a limited ability to speak, read, write or understand English. Interpreters will be provided at no cost to a limited English proficiency individual or deaf individual under the following circumstances:

1. for deaf or hearing impaired individuals who are a litigant party or witness in any type of case;

2. for limited English proficiency litigants parties and witnesses in criminal, administrative traffic, or infraction cases;

3. for limited English proficiency litigants parties and witnesses in juvenile hearings;

4. for limited English proficiency litigants parties and witnesses in Mental Health cases under N.D.C.C. ch. 25-03.1;

22 5. for limited English proficiency ~~litigants~~ parties and witnesses in Sexually
23 Dangerous Commitment cases under N.D.C.C. ch. 25-03.3;

24 6. for limited English proficiency ~~litigants~~ parties and witnesses in Guardianship
25 cases under N.D.C.C. ch. 30.1-27 (minors) and 30.1-28 (incapacitated person);

26 7. for limited English proficiency ~~litigants~~ parties and witnesses in
27 Conservatorship cases under N.D.C.C. ch. 30.1-29;

28 8. for limited English proficiency ~~litigants~~ parties and witnesses in Domestic
29 Violence Protection Order cases under N.D.C.C. ch. 14-07.1;

30 9. for limited English proficiency parties and witnesses in Sexual Assault
31 Restraining Order cases under N.D.C.C. § 12.1-31-01.2;

32 ~~9~~ 10. for limited English proficiency ~~litigants~~ parties and witnesses in Disorderly
33 Conduct Restraining Order cases under N.D.C.C. ch. 12.1-31.2;

34 ~~10~~ 11. for limited English proficiency ~~litigants~~ parties and witnesses in Annulment
35 of Marriage cases under N.D.C.C. ch. 14-04;

36 ~~11~~ 12. for limited English proficiency ~~litigants~~ parties and witnesses in Divorce
37 cases under N.D.C.C. ch. 14-05;

38 ~~12~~ 13. for limited English proficiency ~~litigants~~ parties and witnesses in Paternity
39 cases under N.D.C.C. ch. 14-20;

40 ~~13~~ 14. for limited English proficiency ~~litigants~~ parties and witnesses in Contempt
41 of Court cases under N.D.C.C. ch. 27-10.

42 B. Appointment under Rule. An interpreter will be appointed for a person with

43 limited English proficiency who does not qualify for a free interpreter under Section 2 (A)
44 but who meets the standards of N.D.R.Civ.P. 43 or N.D.R.Crim.P. 28. A party in a civil
45 case may be required to reimburse the court for interpreter costs based upon ability to pay.

46 C. Payment for Interpreters. Payment for interpreter services on behalf of law
47 enforcement, counsel for indigents, prosecutors or corrections agents, other than at court
48 appearances, is the responsibility of the agency that requested the services or the political
49 subdivision that appointed counsel. Interpreter services required for evaluations,
50 treatment, classes, or other similar services is the responsibility of the agency providing
51 the service.

52 D. Exclusions. Payment for interpreter services for discussions or meetings with an
53 attorney, depositions, discovery process, or other legal process outside of a court
54 appearance is the responsibility of the party requesting the service.

55 SECTION 3. COURT INTERPRETER QUALIFICATIONS.

56 Except as otherwise provided in this rule, in order to provide court interpreter
57 services in a judicial proceeding as required by statute, rule, or order of the court, a
58 person must have the following qualifications:

59 A. If providing interpreter services for a person who is deaf or hearing impaired,
60 certification by the Registry of Interpreters for the Deaf, certification by the National or
61 North Dakota Association for the Deaf, or approval by the superintendent for the state
62 school for the deaf.

63 B. If providing interpreter services for a non-English speaking person, certification

64 by a recognized interpreter certification program in another jurisdiction and presence on a
65 statewide roster of interpreters, if any, maintained by that jurisdiction.

66 SECTION 4. QUALIFICATIONS EXCEPTION.

67 If a court interpreter satisfying the requirements of Section 2 is not available, a
68 court may obtain the services of any other interpreter whose actual qualifications have
69 been determined by examination or other appropriate means. For purposes of this section,
70 "actual qualifications" means the ability to readily communicate with a non-English
71 speaking person and orally transfer the meaning of statements to and from English and
72 the language spoken by the non-English speaking person, or the ability to communicate
73 with a hearing-impaired or otherwise disabled person, interpret the proceedings, and
74 accurately repeat and interpret the statements of the hearing-impaired or otherwise
75 disabled person.

76 SECTION 5. GENERAL PROCEDURES - REQUIREMENTS

77 A. Interpreter Oath. Before commencing duties, an interpreter shall take an oath
78 that the interpreter will make a true, complete, and impartial interpretation in an
79 understandable manner to the person requiring interpretation services and that the
80 interpreter will truly, completely, and impartially repeat the statements of the person to
81 the best of the interpreter's skills and judgment.

82 B. Conflicts of Interest - Bias. An interpreter shall disclose to the court any actual
83 or perceived conflicts of interest that may impair the interpreter's ability to adequately
84 interpret the proceedings. An interpreter shall be impartial and unbiased and shall refrain

85 from conduct that may give the appearance of bias.

86 C. Objection to Interpreter. An objection regarding any circumstances that may
87 render an interpreter unqualified to interpret in the proceeding must be made in a timely
88 manner. The court shall consider the objection and make a ruling on the record.

89 D. Method of Interpretation. As the circumstances require, the court shall consult
90 with the interpreter and the parties regarding the method of interpretation to be used to
91 ensure that a complete and accurate interpretation of the testimony of a witness or party is
92 obtained.

93 E. Recording of Proceeding. The court on its own motion or on the motion of a
94 party may order that the testimony of the person for whom interpretation services are
95 provided and the interpretation be recorded for use in verifying the official transcript of
96 the proceeding. If an interpretation error is believed to have occurred based on review of
97 the recording, a party may file a motion requesting that the court direct that the official
98 transcript be amended.

99 F. Additional Interpreter. As circumstances may require, the court may provide an
100 additional interpreter to afford relief and reduce fatigue if the time period of interpretation
101 exceeds [2] continuous hours.

102 G. Removal of Interpreter. The court may remove an interpreter if the interpreter:

103 (1) is unable to adequately interpret the proceedings;

104 (2) knowingly makes a false interpretation;

105 (3) knowingly discloses confidential or privileged information obtained while

106 serving as an interpreter;

107 (4) knowingly fails to disclose a conflict of interest that impairs the ability to
108 provide complete and accurate interpretation; or

109 (5) fails to appear as scheduled without good cause.

110 SECTION 6. EFFECTIVE DATE.

111 This rule is effective March 1, 2005. This rule was amended, effective August 1,
112 2015;_____.

RULE 52 - CONTEMPORANEOUS TRANSMISSION BY RELIABLE ELECTRONIC
MEANS

Section 1. Purpose and Definition.

This rule provides a framework for the use of contemporaneous audio or audiovisual transmission by reliable electronic means in North Dakota's district and municipal courts. This rule is intended to enhance the current level of judicial services available within the North Dakota court system through the use of reliable electronic means and not in any way to reduce the current level of judicial services.

Section 2. In General.

(A) Subject to the limitations in Sections 3, 4 and 5, a district or municipal court may conduct a proceeding by reliable electronic means on its own motion or on a party's motion.

(B) A party wishing to use reliable electronic means must obtain prior approval from the court after providing notice to other parties.

(C) Parties must coordinate approved reliable electronic means proceedings with the court to facilitate scheduling and ensure equipment compatibility.

(D) Each site where reliable electronic means are used in a court proceeding must provide equipment or facilities for confidential attorney-client communication.

(E) A method for electronic transmission of documents must be available at each site where reliable electronic means are used in a court proceeding for use in conjunction

22 with the proceeding.

23 Section 3. Civil Action.

24 In a civil action, a district or municipal court may conduct a hearing, conference,
25 or other proceeding, or take testimony, by reliable electronic means.

26 Section 4. Criminal Action.

27 (A) In a criminal action, a district or municipal court may conduct a hearing,
28 conference, or other proceeding by reliable electronic means, except as otherwise
29 provided in Section 4 (B).

30 (B) Exceptions.

31 (1) A defendant may not plead guilty nor be sentenced by reliable electronic means
32 unless the parties consent.

33 (2) A witness may not testify by reliable electronic means unless the defendant
34 knowingly and voluntarily waives the right to have the witness testify in person.

35 (3) An attorney for a defendant must be present at the site where the defendant is
36 located unless the attorney's participation by reliable electronic means from another
37 location is approved by the court with the consent of the defendant. In a guilty plea
38 proceeding, the court may not allow the defendant's attorney to participate from a site
39 separate from the defendant unless:

40 (a) the court makes a finding on the record that the attorney's participation from the
41 separate site is necessary;

42 (b) the court confirms on the record that the defendant has knowingly and

43 voluntarily consented to the attorney's participation from a separate site; and

44 (c) the court allows confidential attorney-client communication, if requested.

45 Section 5. Revocation of Probation Proceedings for Out of State Offenders.

46 (A) When a petition for revocation of probation has been issued for a probationer
47 who is in another state under the Interstate Compact for Adult Offender Supervision and
48 who has been sentenced by a court having jurisdiction in the other state to a period of
49 incarceration, a North Dakota district court may conduct the revocation of probation
50 hearing by reliable electronic means. Before a district court may conduct a revocation of
51 probation hearing by reliable electronic means for a probationer serving a sentence of
52 incarceration in another state, the district court shall:

53 (1) confirm on the record that the probationer has knowingly and voluntarily
54 consented to a revocation of probation hearing by reliable electronic means; and

55 (2) confirm on the record that the probationer has knowingly and voluntarily
56 consented to the probationer's attorney's representation from a site separate from the
57 probationer; and

58 (3) allow the probationer opportunity for confidential attorney-client
59 representation.

60 (B) If the district court orders probation be revoked, the district court shall state on
61 the record whether the period of incarceration imposed by the other state fully or partially
62 satisfies the sentence imposed by the district court.

63 Section 5 6. Mental Health Proceeding.

64 (A) In a mental health proceeding, a district court may conduct a proceeding by
65 reliable electronic means and allow the following persons to appear or present testimony:

66 (1) the respondent or patient;

67 (2) a witness;

68 (3) legal counsel for a party.

69 (B) Notice, Objection, and Waiver.

70 (1) Notice. Before holding any mental health proceeding by reliable electronic
71 means, the court must give notice to the petitioner and the respondent. The notice must:

72 (a) advise the parties of their right to object to the use of reliable electronic means;

73 (b) inform the respondent that the proceedings may be recorded on video and that,
74 if there is an appeal, the video recording may be made part of the appendix on appeal and
75 is part of the record on appeal.

76 (2) Objection.

77 (a) Reliable electronic means may not be used in a mental health proceeding if any
78 party objects. The respondent must be given the opportunity to consult with an attorney
79 about the right to object to the use of reliable electronic means.

80 (b) If the respondent fails to make an objection or fails to make a timely objection
81 to the use of reliable electronic means, the court may nevertheless continue the
82 proceeding for good cause.

83 (c) If the proceeding is continued, the respondent will continue to be held at the
84 facility where the respondent was receiving treatment or, at the choice of the treatment
85 provider in a less restrictive setting, until a face-to-face hearing can be completed.

86 (d) A face-to-face hearing must be scheduled to occur within four days, exclusive
87 of weekends and holidays, of the date the objection was made, unless good cause is
88 shown for holding it at a later time.

89 (3) Waiver. Upon mutual consent of the parties, and with the approval of the court,
90 notice requirements in a mental health proceeding may be waived to allow for the conduct
91 of proceedings without prior notice or with notice that does not conform to Section 5 (B)
92 (1).

93 ~~Section 6. Effective Date.~~

94 ~~This rule is effective June 1, 2005, and remains in effect until further order of the~~
95 ~~supreme court. This rule was amended to extend to proceedings conducted by~~
96 ~~contemporaneous audio or audiovisual transmission using reliable electronic means~~
97 ~~effective March 1, 2015.~~

98 ~~[Adopted effective May 1, 2005; amended effective June 1, 2005; March 1, 2015.]~~

99 EXPLANATORY NOTE

100 This rule was adopted effective May 1, 2005. Amended effective June 1, 2005;
101 March 1, 2015; _____.

102 This rule was amended, effective March 1, 2015, to extend the application of the
103 rule to proceedings conducted by contemporaneous audio or audiovisual transmission
104 using reliable electronic means.

105 A new Section 5 was added, effective _____, to establish a procedure
106 for the use of contemporaneous audio or audiovisual transmission using reliable
107 electronic means in proceedings to revoke probation for probationers who are in another
108 state.

109 SOURCES Joint Procedure Committee Minutes of _____; April
110 24-25, 2014, pages 15-16; April 27-28, 2006, pages 22-24; April 28-29, 2005, pages 21-
111 22; April 24-25, 2003, pages 20-23; September 26-27, 2002, pages 4-12.