

**Synopsis of Proposed Amendments to the  
North Dakota Rules of Appellate Procedure  
Supreme Court Docket No. 20180289**

Pages and lines are numbered in the printed document. Copies of the printed rules may be requested from Penny Miller, Clerk of the Supreme Court - PMiller@ndcourts.gov.  
Click [here](#) for information on filing comments on the proposed rules.

**Rule 2.1. Mental Health Appeals under Chapter 25-03.1, North Dakota Century Code**  
Amendments to clarify that extensions of time to file a notice of appeal are not permitted.

**Rule 3. Appeal as of Right – How Taken**  
Amendments to require preliminary issues to be filed for all appeals.

**Rule 14. Identity Protection**  
Amendments to mirror identity protection language for termination appeals to that for conservatorship and guardianship.

**Rule 24. Supplemental Statement of Indigent Defendant**  
Amendments to allow a supplemental statement by an indigent petitioner in a criminal or post-conviction case.

**Rule 28. Briefs**  
Amendments to require that if oral argument is requested, the cover of a brief indicate “Oral Argument Requested” and the brief contain a short statement explaining why oral argument should be held.

**Rule 31. Filing and Service of Briefs**  
Amendments provide that briefs will be filed in electronic format, presumably pdf, and the need for a word processing version to be filed with the Clerk of the Supreme Court is eliminated.

**Rule 32. Form of Briefs, Appendices, and other Documents**  
Amendments to change maximum words in briefs and maximum page counts. These amendments are recommended due to the Joint Procedure Committee proposal that briefs be accepted in a portable document format, which adds difficulty to counting words.

**Rule 34. Oral Argument**  
Amendments to outline when oral argument will or will not be permitted.

**Rule 40. Petition for Rehearing**  
Amendments to eliminate word count requirements in petitions for rehearing and use page counts.

**RULE 2.1 MENTAL HEALTH APPEALS UNDER CHAPTER 25-03.1, NORTH  
DAKOTA CENTURY CODE**

1 (a) Filing Notice of Expedited Appeal. An expedited appeal from an order under N.D.C.C. § 25-  
2 03.1-29 may be taken by filing a notice of appeal with the clerk of the supreme court within 30  
3 days after entry of the order. Extensions of time to file a notice of appeal under this rule are not  
4 permitted.

5 (b) Content of Notice of Appeal. The notice of appeal must:

- 6 (1) specify the party or parties taking the appeal;  
7 (2) designate the order being appealed; and  
8 (3) name the court to which the appeal is taken.

9 (c) Motion for Temporary Stay and Specifications of Error. Any motion for a temporary stay of  
10 the order appealed from while the appeal is pending must be served and filed with the notice of  
11 appeal along with specifications of error specifying the grounds for appeal. Any stay granted by  
12 the district court prior to appeal remains valid only if a temporary stay request is filed with the  
13 supreme court with the notice of appeal. Once the supreme court acts on the stay request, any  
14 district court stay terminates.

15 (d) Record on Appeal. The record on appeal consists of the record required by Rule 10(a) . A  
16 recording of the proceedings or an agreed statement of the case may substitute for the transcript.

17 (e) Briefs. Unless the appellant moves for a temporary stay of the order of the district court, the  
18 appellant's brief must be filed with the notice of appeal and must be served upon the opposing  
19 party at the time of filing. The appellee's brief must be served and filed no later than seven days  
20 after service of the appellant's brief. If the appellant moves for a temporary stay of the order of  
21 the district court, the appellant's brief must be served and filed no later than five days after the  
22 notice of appeal is filed and the appellee's brief must be served and filed no later than five days  
23 after service of the appellant's brief.

1 (f) Notice of Appellant's Presence at Hearing. If the appellant intends to be present at the  
2 hearing, notice of the intention must accompany the notice of appeal. Any party may file a  
3 proposed interim order for issuance by the supreme court which will ensure the appellant the  
4 opportunity to be present at the hearing on appeal while protecting the interest sought to be  
5 served by the order being appealed. The plans for implementing the proposed interim order must  
6 be stated with particularity.

7 (g) Motions. Any motion, other than a motion for temporary stay, must be filed within seven  
8 days after service of the notice of appeal. Any party may file a response in opposition to a  
9 motion within seven days after service of the motion.

10 (h) Application of Other Rules. To the extent they are not inconsistent with N.D.C.C. § 25-03.1-  
11 29 or this rule, all other rules of appellate procedure apply.

#### 12 **EXPLANATORY NOTE**

13 Rule 2.1 was adopted, effective April 1, 1983; amended, effective March 1, 1998; March 1,  
14 2003; March 1, 2008; March 1, 2011; Oct 1, 2014, \_\_\_\_\_.

15 Rule 2.1 provides special procedures to accommodate the requirement in N.D.C.C. § 25-03.1-29  
16 for a hearing within 14 days after the notice of appeal is filed in a mental health proceeding.

17 Subdivision (a) was amended, effective Oct 1, 2014, to provide for the filing of the notice of  
18 appeal in the supreme court.

19 Subdivision (a) was amended, effective \_\_\_\_\_, to clarify that extensions of time to file the  
20 notice of appeal are not permitted.

21 Subdivision (c) was amended, effective March 1, 2008, to make it clear that a party who seeks to  
22 stay an order that is appealed must request a temporary stay from the supreme court when the

1 notice of appeal is filed. Under N.D.C.C. § 25-03.1-29, only the supreme court can stay an order  
2 once an appeal is commenced.

3 Subdivision (e) was amended, effective March 1, 2011, to increase the time to serve and file an  
4 appellee's brief from five to seven days after service of the appellant's brief. If the appellant  
5 moves for a temporary stay of the order of the district court, the time to serve and file briefs was  
6 increased from three to five days.

7 Subdivision (g) was amended, effective March 1, 2011, to increase the time to file a motion from  
8 five to seven days.

9 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, pages 12-13; April 29-  
10 30, 2010, pages 22, 24; April 26-27, 2007, pages 27-28; September 23-24, 1999, pages 9-10;  
11 September 26-27, 1996, page 18; February 17-18, 1983, pages 33-34.

12

13 STATUTES AFFECTED:

14 CONSIDERED: 25-03.1-29, N.D.C.C.

**RULE 3. APPEAL AS OF RIGHT—HOW TAKEN**

1 (a) Filing the Notice of Appeal.

2 (1) An appeal permitted by law as of right from a district court to the supreme court may be  
3 taken by filing a notice of appeal with the clerk of the supreme court within the time allowed  
4 by Rule 4.

5 (2) An appellant's failure to take any step other than the timely filing of a notice of appeal  
6 and payment of any required docket fee does not affect the validity of the appeal, but is  
7 ground only for the supreme court to act as it considers appropriate, including dismissing the  
8 appeal.

9 (b) Joint or Consolidated Appeals. When two or more parties are entitled to appeal from a district  
10 court judgment or order, and their interests make joinder practicable, they may file a joint notice of  
11 appeal. They may then proceed on appeal as a single appellant. Appeals may be consolidated by  
12 order of the supreme court upon its own motion or upon motion of a party, or by stipulation of the  
13 parties to the several appeals.

14 (c) Content of the Notice of Appeal. The notice of appeal must:

- 15 (1) specify the party or parties taking the appeal;  
16 (2) designate the judgment, order, or part thereof being appealed;  
17 (3) name the court to which the appeal is taken; and  
18 (4) ~~in an appeal from a civil case or a post-conviction relief proceeding,~~ include a  
19 preliminary statement of issues.

20 (d) Serving the Notice of Appeal.

21 (1) When a notice of appeal is filed, the clerk of the supreme court must promptly file notice  
22 of filing with the district court clerk using the Odyssey system and serve notice of the filing  
23 by sending a copy of the notice of appeal and any attachments by mail, third-party  
24 commercial carrier, or electronic means to each party's counsel of record - excluding the  
25 appellant's counsel - or, if a party is self-represented and does not have an e-mail address,

1 to the party's last known address. The clerk of the supreme court must note on each copy the  
2 date when the notice of appeal was filed.

3 (2) The clerk of the supreme court's failure to serve a copy of the notice of appeal does not  
4 affect the validity of the appeal. The clerk of the supreme court must note on the docket the  
5 names of the parties to whom the clerk sends copies, and the date they were sent. Service is  
6 sufficient despite the death of a party or the party's counsel.

7 (3) The title of the action is not to be changed as a consequence of the appeal.

### 8 **EXPLANATORY NOTE**

9 Rule 3 was amended, effective January 1, 1988; March 1, 1999; March 1, 2003; March 1, 2007; Oct  
10 1, 2014,\_\_\_\_\_.

11 Rule 3 is patterned after Fed.R.App.P. 3. Subdivision (a) was amended, effective Oct 1, 2014, to  
12 require filing of the notice of appeal with the clerk of the supreme court rather than the clerk of  
13 district court. Timely filing of the notice of appeal is required to give the supreme court jurisdiction  
14 over the appeal. Any required docket fee must be paid before the appeal will be filed. After a party  
15 files a notice of appeal, the clerk of the supreme court sends notice to the district court clerk and to  
16 each of the parties. For the service of other documents, these rules place the responsibility of service  
17 on counsel rather than the clerk of the supreme court.

18 It should be noted, Rule 10(b) requires proof of service of the order for transcript and a copy of the  
19 stipulation of excluded portions, if any, to be filed with the notice of appeal, Rule 12(a) requires the  
20 docket fee to accompany the filing of the notice of appeal, and Rule 7 requires a bond for costs or  
21 equivalent security be filed with the notice of appeal in civil cases.

22 Subdivision (a) provides failure to follow any rule may result in dismissal of the appeal, an award  
23 of costs, or other appropriate action.

24 Subdivision (c) was amended, effective Oct 1, 2014, to require the appellant in a civil action or  
25 post-conviction proceeding to include a preliminary list of the issues on appeal with the notice of

1 appeal. The purpose of the requirement is to provide the court information to make a preliminary  
2 determination whether oral argument is unnecessary. In this list, the appellant is expected to provide  
3 the court notice of the issues of which the appellant is aware at the time the notice of appeal is filed.

4 Subdivision (c) was amended, effective \_\_\_\_\_, to require the appellant in all appeals include a  
5 preliminary list of the issues on appeal within the notice of appeal.

6 Subdivision (d) was amended, effective March 1, 1999, to allow copies to be sent via a third-party  
7 commercial carrier as an alternative to mail.

8 Subdivision (d) was amended, effective Oct 1, 2014, to require the clerk of the supreme court to  
9 notify the clerk of district court of the filing of the notice of appeal and to send a copy of the notice  
10 of appeal to counsel of record and any self-represented parties.

11 Paragraph (d)(4) requires the title of the action to remain the same on appeal. Consistent with  
12 N.D.R.App.P. 1(c), the party who first files the notice of appeal must be designated as the appellant  
13 in the title and the responding party must be designated as the appellee.

14 Rule 3 was amended, effective March 1, 2003, in response to the December 1, 1998, amendments  
15 to Fed.R.App.P. 3. The language and organization of the rule were changed to make the rule more  
16 easily understood and to make style and terminology consistent throughout the rules.

17 Rule 3 was amended, effective Oct 1, 2014, to replace "supreme court clerk" with "clerk of the  
18 supreme court" and "paper" with "document."

19 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, pages 14-15; September  
20 22-23, 2005, page 25; September 23-24, 1999, page 10; January 29-30, 1998, page 21; February  
21 19-20, 1987, pages 4-5; September 18-19, 1986, pages 12-13; May 25-26, 1978, page 3; March  
22 16-17, 1978, page 1; January 12-13, 1978, pages 2-3; September 15-16, 1977, pages 4-5.  
23 Fed.R.App.P. 3; § 3.13(b) ABA Standards Relating to Appellate Courts (Approved Draft, 1977).

1 STATUTES AFFECTED:

2 SUPERSEDED: N.D.C.C. § § 28-18-09, 28-27-05, 28-27-26, 29-28-05, 29-28-20 and 29-28-21.

3 CROSS REFERENCE: N.D.R.App.P. 1 (Scope of Rules), N.D.R.App.P. 7 (Bond for Costs on  
4 Appeal in Civil Cases), N.D.R.App.P. 10 (The Record on Appeal), N.D.R.App.P. 11 (Transmission  
5 and Filing of the Record), N.D.R.App.P. 12 (Docketing the Appeal), and N.D.R.App.P. 31 (Filing  
6 and Service of Briefs); N. D. R. Civ. P. Rule 54(b) (Judgment Upon Multiple Claims or Involving  
7 Multiple Parties).

**RULE 14. IDENTITY PROTECTION**

1 (a) Form of Confidential References. In appellate briefs, at oral argument and in opinions, the  
2 following individuals may not be referred to by name but may be referred to by the individual's  
3 initials:

4 (1) the respondent in a mental health proceeding;

5 (2) the respondent and members of the respondent's family in a conservatorship or  
6 guardianship proceeding;

7 (3) the respondent in a juvenile proceeding;

8 (4) the child and members of the child's family ~~parents~~ in a proceeding to terminate  
9 parental rights;

10 (5) a minor child;

11 (6) a victim or alleged victim of a sexual offense.

12 (b) Modification of Electronic Opinions.

13 (1) Individual Names. On request, if the name of an individual eligible for protection  
14 under subdivision (a) appears in the electronic version of a specific appellate opinion, it  
15 must be replaced by the individual's initials and the opinion annotated with the words  
16 "Modified under N.D.R.App.P. 14."

17 (2) Birth Dates. On request, if the full birth date of any individual appears in the  
18 electronic version of a specific appellate opinion, it may be replaced by the individual's  
19 birth year and the opinion annotated with the words "Modified under N.D.R.App.P. 14."

20 **EXPLANATORY NOTE**

21 Rule 14 was adopted effective March 1, 2008; March 1, 2009; December 15, 2011, \_\_\_\_\_.

22 This rule is not intended to create a separate cause of action.

23 Paragraph (a)(4) was amended, effective \_\_\_\_\_ to require all references to a child or  
24 members of a child's family in appellate material to be by the individual child's initials in

1 termination of parental rights proceedings.

2 Paragraph (a)(5) was amended, effective March 1, 2009, to require all references to minor  
3 children in appellate material to be by the individual child's initials.

4 Paragraph (b)(2) was added, effective December 15, 2011, to allow persons to request removal  
5 of a full birth date from an electronic version of an appellate opinion.

6 Sources: Joint Procedure Committee Minutes of September 30, 2011, pages 17-18; April 26-27,  
7 2007, pages 28-29.

8 Statutes Affected:

9 Considered: N.D.C.C. §§ 12.1-34-02, 12.1-35-03, 14-15-16, 14-20-54, 25-03.1-43, 27-20-51.



1 amended \_\_\_\_\_.

2 The title of this rule was amended, effective October 1, 2014, to clarify that an indigent  
3 defendant may file a statement of additional grounds for review.

4 Paragraph (a)(1) was amended, effective \_\_\_\_\_, to allow supplemental statements to be  
5 filed in post-conviction relief cases.

6 Paragraph (a)(2) was amended, effective March 1, 2013, to decrease the page volume allowed in  
7 a supplemental brief.

8 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 22; January 26-27,  
9 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29, 2011, page 18-20; September  
10 25, 2008, pages 7-12; Wash.R.App.P. 10.10, 18.3.

**RULE 28. BRIEFS**

**(a) Form of Briefs.** All briefs must comply with Rule 25 and Rule 32.

**(b) Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a table of contents, with paragraph references;

(2) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the paragraphs in the brief where they are cited;

(3) in an application for the exercise of original jurisdiction, a concise statement of the grounds on which the jurisdiction of the supreme court is invoked, including citations of authorities;

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below;

(6) a statement of the facts relevant to the issues submitted for review, which identifies facts in dispute and includes appropriate references to the record (see Rule 28(f) ) ;

(7) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); and

(C) if the appeal is from a judgment ordered under N.D.R.Civ.P. 54(b), whether

24 the certification was appropriate; and

25 (D) a short conclusion stating the precise relief sought.

26 **(c) Appellee's Brief.** The appellee's brief must conform to the requirements of subdivision (b),  
27 except that none of the following need appear unless the appellee is dissatisfied with the  
28 appellant's statement:

29 (1) the jurisdictional statement;

30 (2) the statement of the issues;

31 (3) the statement of the case;

32 (4) the statement of the facts; and

33 (5) the statement of the standard of review.

34 **(d) Reply Brief.** The appellant may file a single brief in reply to the appellee's brief. Unless the  
35 court permits, no further briefs may be filed. A reply brief must contain a table of contents, with  
36 paragraph references, and a table of authorities—cases (alphabetically arranged), statutes, and  
37 other authorities—with references to the paragraphs in the reply brief where they are cited.

38 **(e) References to Parties.** In briefs and at oral argument, counsel should minimize use of the  
39 terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual  
40 names or the designations used in the lower court or agency proceeding, or such descriptive  
41 terms as "the employee," "the injured person," "the taxpayer," "the purchaser."

42 **(f) References to the Record.** References to the parts of the record contained in the appendix  
43 filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared  
44 after the briefs are filed or if references are made in the briefs to parts of the record not  
45 reproduced in the appendix, the references must be to the docket number of that part of the  
46 record. A party referring to evidence for which admissibility is in controversy must cite the

47 pages of the appendix or of the transcript at which the evidence was identified, offered, and  
48 received or rejected.

49 **(g) Reproduction of Statutes, Rules, Regulations, and Other Sources.** If the court's  
50 determination of the issues presented requires the study of statutes, rules, regulations, etc., the  
51 relevant parts must be set out in the brief or in an addendum at the end of the brief.

52 **(h) ~~Reserved~~. Oral Arguments Requested.** Any party who desires oral argument must place  
53 the words "ORAL ARGUMENT REQUESTED" conspicuously on the front cover of the  
54 appellant's, appellee's or cross-appellee's reply brief. Any party requesting oral argument must  
55 include in their brief a short statement explaining why oral argument should be held.

56 **(i) Briefs in a Case Involving a Cross-Appeal.**

57 (1) An appellee and cross-appellant must file a single brief at the time the appellee's brief  
58 is due. This brief must contain the issues and argument involved in the cross-appeal as  
59 well as the answer to the appellant's brief.

60 (2) The appellant's answer to the cross-appeal must be included in the reply brief, but  
61 without duplication of statements, arguments, or authorities contained in the appellant's  
62 principal brief. To avoid duplication, references may be made to the appropriate portions  
63 of the appellant's principal brief.

64 (3) The cross-appellant may file a reply brief confined strictly to the arguments raised in  
65 the cross-appeal. This brief is due within 14 days after service of the appellant's reply  
66 brief; however, if there is less than 14 days before oral argument, the reply brief must be  
67 filed at least 5 days before argument.

68 **(j) Briefs In a Case Involving Multiple Parties.** Any number of parties may join in a single  
69 brief or adopt by reference any part of another's brief. Parties may similarly join in reply briefs.

70 **(k) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a  
71 party's attention after the party's brief has been filed—or after oral argument but before  
72 decision—a party may promptly advise the court by letter, with a copy to all other parties,  
73 setting forth the citations. The letter must state without argument the reasons for the  
74 supplemental citations, referring either to the page of the brief or to a point argued orally. Any  
75 response must be made promptly and must be similarly limited.

76 **(l) Requirements.** All briefs under this rule must be concise, presented with accuracy, logically  
77 arranged with proper headings, and free from burdensome, irrelevant or immaterial matters.

#### 78 EXPLANATORY NOTE

79 Rule 28 was amended, effective March 1, 1986; January 1, 1988; March 1, 1994; March  
80 1, 1996; March 1, 2003; March 1, 2008; March 1, 2010; March 1, 2011; October 1,  
81 2014; December 1, 2014; \_\_\_\_\_.

82 Under paragraph (b) (4), each legal issue should be stated as a question of law  
83 sufficiently specific to allow the court to understand the precise issue presented. Generalized  
84 statements such as, "Is the verdict supported by the evidence?" are not sufficient.

85 Under subdivision (f), references may be made to the docket number of parts of the  
86 record not reproduced as in the examples following: Answer, docket No. 2, p. 7; Motion for  
87 Judgment, docket No. 15, p. 2; Transcript p. 231.

88 Rule 28 was revised, effective March 1, 2003, in response to the December 1, 1998,  
89 amendments to Fed.R.App.P. 28. The language and organization of the rule were changed to  
90 make the rule more easily understood and to make style and terminology consistent throughout  
91 the rules. Substantive changes were made to conform this rule with the changes made in Rule 32.

92 Subdivision (a) was added to inform parties that all briefs must comply with Rule 32 and

93 amended effective October 1, 2014, to conform the rule to electronic filing.

94 Subdivision (b) :

95 Paragraphs (1) and (2) were amended, effective March 1, 2003, to separate the table of  
96 contents and the table of authorities into two distinct items in a brief.

97 Paragraphs (5) and (6) were amended, effective March 1, 2003, to require two separate  
98 statements—a statement of the case (the procedural history) and a statement of the facts.

99 Paragraph (7) was amended, effective March 1, 2010, to require a party to brief the  
100 appropriateness of a district court's grant of a certification under N.D.R.Civ.P. 54(b).

101 Subdivision (c) was amended, effective March 1, 2003, to conform the appellee's brief  
102 with the appellant's brief, and to expand the items that need not be included in the appellee's  
103 brief.

104 Subdivision (h) was amended, effective March 1, 2003, to delete length limitations,  
105 which have been moved to Rule 32.

106 Subdivision (h) was amended, effective \_\_\_\_\_, to require a party to request oral  
107 argument and provide a short statement explaining why oral argument should be held.

108 Paragraph (i)(3) was amended, effective March 1, 2011, to change the deadline for a  
109 cross-appellant to serve and file a reply brief if there is less than 14 days before argument from 3  
110 to 5 days before argument.

111 Subdivision (k) was added, effective March 1, 2003, to provide a means for parties to  
112 inform the court of authorities that come to a party's attention after a brief has been filed or after  
113 oral argument.

114 Subdivision (l) was added, effective March 1, 2008, to explain requirements for briefs  
115 filed under Rule 28.

116 Rule 28 was amended, effective October 1, 2014, to replace "paper" with "document."

117 Rule 28 was amended, effective December 1, 2014, to require references to paragraph  
118 numbers in tables of contents and tables of authorities.

119 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 25; April  
120 29-30, 2010, pages 23-24; September 24-25, 2009, pages 11-12; April 26-27, 2007, pages 29-  
121 31; September 27-28, 2001, pages 7-9; April 27-28, 1995, pages 15-17; January 26-27,  
122 1995, pages 6-7; September 29-30, 1994, pages 13-16; January 28-29, 1993, page 11; February  
123 19-20, 1987, page 8; September 18-19, 1986, pages 15-16; November 30, 1984, pages 32-  
124 33; October 19, 1984, pages 23-26; March 16-17, 1978, page 4; January 12-13, 1978, pages 15-  
125 18. Fed.R.App.P. 28.

126 STATUTES AFFECTED:

127 SUPERSEDED: N.D.C.C. §§ 28-18-06, 28-18-09, 28-27-33, 29-23-01, 29-23-02, 29-23-  
128 03, 29-23-04, 29-23-08, and 29-23-09.

129 CROSS REFERENCE: N.D.R.App.P. 25 (Filing and Service), N.D.R.App.P.  
130 30 (Appendix), N.D.R.App.P. 31 (Filing and Service of Briefs) and N.D.R.App.P. 32 (Form of  
131 Briefs, Appendices, and Other Documents).

**RULE 31. FILING AND SERVICE OF BRIEFS**

(a) Time to Serve and File a Brief; Where Filed. The appellant must serve and file a brief within 40 days after the date on which the transcript is filed but, if no transcript is ordered, within 40 days after the notice of appeal is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief; however, if there is less than 14 days before oral argument the reply brief must be filed at least 5 days before argument. All briefs must be filed with the clerk of the supreme court.

(b) Number of Copies to Be Filed and Served.

(1) Each brief must be served and filed as follows:

(A) one electronic copy of each brief must be served on each self-represented party and on counsel for each party separately represented;

(B) one electronic copy of each brief must be filed with, or electronically transmitted to, the clerk of the supreme court ~~unless the filing party certifies the brief was not prepared on a computer or word processor; and~~

(C) for briefs filed in person, by mail or third-party commercial carrier, seven bound copies and an unbound original of each brief must be filed with the clerk of the supreme court.

(2) All electronic copies of briefs must comply with Rule 25(a)(3). If a paper brief is filed or served, it must contain all the parts of the electronic brief and be in the same order as in the electronic brief. ~~must contain in a single file all information contained in a paper brief, including cover, table of contents, and certifications, in the same order as in the paper brief. The electronic copy of a brief must be formatted in WordPerfect; or, if WordPerfect is not available, Microsoft Word; or, if Microsoft Word is not available, ASCII; or other compatible electronic language authorized by the clerk of the supreme court.~~

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule or within a time extended by the court, the court on its own motion may dismiss the

appeal or an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument.

### EXPLANATORY NOTE

Rule 31 was amended, effective January 1, 1988; March 1, 1997; March 1, 1999; March 1, 2001; technical amendments effective August 1, 2001; March 1, 2003; March 1, 2008; March 1, 2011; October 1, 2014, \_\_\_\_\_.

Rule 31 was amended, effective March 1, 2003, in response to the December 1, 1998, amendments to Fed.R.App.P. 31. The language and organization of subdivisions (a) and (c) were changed to make the rule more easily understood and to make terminology and style consistent throughout the rules.

Subdivision (a) was amended, effective March 1, 2011, to change the deadline for an appellant to serve and file a reply brief if there is less than 14 days before argument from 3 to 5 days before argument.

Subdivision (b) was amended, effective March 1, 2008, to require that a copy of each brief be served on each self-represented party. The subdivision was also amended to update requirements for filing an electronic copy with paper briefs.

Subdivision (b) was amended, effective October 1, 2014, to conform the rule to electronic filing. All parties, whether filing electronically or in paper, must file an electronic copy of the brief unless the party certifies that the brief was not prepared on a computer or word processor.

Paragraphs (b)(1) and (b)(2) were amended, effective \_\_\_\_\_, to eliminate filing of a word processing version of a brief with the clerk of the supreme court.

Subdivision (c) was amended, effective March 1, 2008, to clarify extension and dismissal procedure.

Rule 31 was amended, effective October 1, 2014, to replace "supreme court clerk" with "clerk of the supreme court."

SOURCES: Joint Procedure Committee Minutes of September 26, 2013, pages 26-27; April 29-30, 2010, page 24; January 25, 2007, page 19; September 27-28, 2001, page 23; April 26-27, 2001, page 9; September 28-29, 1995, page 12; May 21-22, 1987, page 17; February 19-20, 1987, page 8; September 18-19, 1986, pages 2, 20; May 25-26, 1978, page 17; October 27-28, 1977, pages 6-7; September 15-16, 1977, pages 13-14. Fed.R.App.P. 31.

CROSS REFERENCE: N.D.R.App.P. 26(b) (Extending Time) , N.D.R.App.P. 28 (Briefs) , N.D.R.App.P. 30 (Appendix to the Briefs), N.D.R.App.P. 32 (Form of Briefs, Appendices, and Other Documents).

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

1 (a) Form of a Brief.

2 (1) Reproduction.

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

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

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

15 (A) the number of the case;

16 (B) the name of the court;

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

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

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

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

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

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

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

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

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

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

12 (7) Paragraph Numbers. Paragraphs must be numbered using arabic numerals in briefs.  
13 Reference to material in any document that contains paragraph numbers must be to the  
14 paragraph number.

15 (8) Page and Type-Volume Limitations.

16 (A) ~~Page Word Limit for Proportional Typeface. If proportionately spaced~~  
17 ~~typeface is used, a~~ A principal brief may not exceed 32 pages ~~8,000 words~~, and a  
18 reply brief may not exceed 10 pages ~~2,000 words~~, excluding words in the table of  
19 contents, the table of citations, and any addendum. Footnotes or endnotes must  
20 be included in the pageword count.

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

24 (C) ~~(B)~~ Word and Page Limit for N.D.R.Civ.P. 54(b) Certification. If  
25 ~~proportionately spaced typeface is used, a~~ An argument on the appropriateness of  
26 N.D.R.Civ.P. 54(b) certification may not exceed 1,250 words 5 pages. If  
27 ~~monospaced typeface is used, an argument may not exceed five pages.~~ Word and  
28 page limits for Rule 54(b) certification are in addition to the limits set forth in  
29 (7)(A) and (7)(B).

30 (b) Form of an Appendix. An appendix must comply with Rule 25 and paragraphs (a) (1), (2),

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

- 2 (1) the cover of a separately bound appendix must be white;
- 3 (2) an appendix may include a legible photocopy of any document found in the record;
- 4 (3) pages in the appendix must be consecutively numbered;
- 5 (4) an appendix may be prepared with double sided pages.

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

9 (c) Form of Other Documents.

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

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

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

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

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

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

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

23 (e) Certificate of Compliance. A brief must include a certificate by the attorney, or an  
24 unrepresented party, that the document complies with the type-volume limitation. The person  
25 preparing the certificate must rely on the page count of the filed electronic document. The  
26 certificate must state the number of pages in the document. An inaccurate certification may  
27 subject the filer to sanctions.

## 28 EXPLANATORY NOTE

29 Rule 32 was amended, effective March 1, 1996; amended effective September 11, 1996, subject

1 to comment; final adoption on October 23, 1996; amended effective August 1, 2001; March 1,  
2 2003; March 1, 2007; March 1, 2008; March 1, 2010; March 1, 2013; October 1, 2014; March 1,  
3 2017; March 1, 2018, \_\_\_\_\_.

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

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

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

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

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

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

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

21 Paragraph (a)(8) was amended, effective \_\_\_\_\_, to use only page counts for filings.

22 Paragraph (a) (8) , effective March 1, 2003, limits the length of a brief. A person may rely on the

1 word or line count of the word-processing system used to prepare the brief.

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

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

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

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

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

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

15 Subdivision (e) was amended, effective \_\_\_\_\_, to require certification of the page count  
16 by filers.

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

19 SOURCES: Joint Procedure Committee Minutes of January 26-27, 2017, page 30; January  
20 28-29, 2016, page 8; September 26, 2013, pages 27-28; January 26-27, 2012, pages 8-9;  
21 September 30, 2011, pages 11-12; April 28-29, 2011, page 18-20; September 24-25, 2009, pages  
22 15-16; April 26-27, 2007, page 18; January 25, 2007, page 19; September 22-23, 2005, page 27;

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

5 STATUTES AFFECTED:

6 SUPERSEDED: N.D.C.C. § 29-28-19.

7 CROSS REFERENCE: N.D.R.App.P. 27 (Motions) ; N.D.R.App.P. 28 (Briefs) ; N.D.R.App.P.  
8 29 (Brief of an Amicus Curiae) ; N.D.R.App.P. 30 (Appendix to the Briefs) ; N.D.R.App.P. 40  
9 (Petition for Rehearing).

**RULE 34. ORAL ARGUMENT**

**(a) ~~In General.~~ Request for Oral Argument.**

~~(1) **Party's Statement.** Any party may file, or the court may require, a statement explaining why oral argument should, or need not, be permitted.~~

(1) Oral argument generally will be allowed unless:

(a) a party has failed to file a timely brief;

(b) no request for oral argument has been made by any party as required by Rule 28(h);

(c) the parties have agreed to waive oral argument; or

(d) the Court, in the exercise of its discretion, determines oral argument is unnecessary.

~~(2) **Standards.** Oral argument may be denied if a party fails to file a brief or if the court, upon examination of the briefs and record, decides that oral argument is unnecessary.~~

~~(3) (2) **Notice.** The clerk of the supreme court must advise all parties whether oral argument will be scheduled and, if so, the date, time, and place for argument.~~

**(b) Time Allowed for Argument; Postponement.** Regardless of the number of counsel on each side, the appellant will be allowed 30 minutes and the appellee will be allowed 20 minutes to present argument. Arguments on motions will be granted only in extraordinary circumstances. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date. A party is not obliged to use all of the time allowed, and the court may terminate the argument at any time.

**(c) Order and Content of Argument.** The appellant opens and may reserve time to conclude the argument. The opening argument may include a fair statement of the case. Counsel must not read at length from briefs, records, or authorities.

**(d) Cross-Appeals and Separate Appeals.** Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Parties should not duplicate arguments.

**(e) Nonappearance of a Party.** If oral argument is conducted and the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

**(f) Submission on Briefs.** Any party may submit its argument If no oral argument is scheduled under Rule 34(a)(1), the case will be submitted to the court on the briefs, but unless the court may directs otherwise that the case be argued.

**EXPLANATORY NOTE**

1 Rule 34 was amended, effective July 1, 1981; January 1, 1988; March 1, 1994; March 1,  
2 1997; March 1, 2003; October 1, 2014, \_\_\_\_\_.

3 Under subdivision (b), in the case of multiple appellants or appellees, each side must divide the  
4 time accorded unless additional time has been requested and granted. The omission of  
5 subdivision (g) of the Federal Rule is not intended to prevent the use of any exhibits at oral  
6 argument.

7 Rule 34 was revised, effective March 1, 2003, in response to the December 1, 1998, amendments  
8 to Fed.R.App.P. 34. The language and organization of the rule were changed to make the rule  
9 more easily understood and to make style and terminology consistent throughout the rules.

10 Subdivision (a) was amended, effective March 1, 2003, to make clear that the court has  
11 discretion to determine whether oral argument should or should not be permitted.

12 Subdivision (a) was amended, \_\_\_\_\_, to outline when oral argument will or will not be  
13 allowed.

14 Rule 34 was amended, effective October 1, 2014, to replace "supreme court clerk" with "clerk of  
15 the supreme court."

16 SOURCES: Joint Procedure Committee Minutes of April 25-26, 2002, pages 12-13; January 24-  
17 25, 2002, pages 19-21; September 28-29, 1995, page 13; January 28-29, 1993, page 11; February  
18 19-20, 1987, page 8; September 18-19, 1986, pages 20-21; April 26, 1984, page 30; January 12-  
19 13, 1978, pages 22-23. Fed.R.App.P. 34.

20 STATUTES AFFECTED:

21 Superseded: N.D.C.C. §§ 28-31-04, 28-31-05, 29-28-23, 29-28-24, and 29-28-25.

22 CROSS REFERENCE: N.D.R.App.P. 28(h) (Cross-Appeals).

**RULE 40. PETITION FOR REHEARING**

1 (a) Time to File; Content; Answer; Action by Court if Granted.

2 (1) Time. A petition for rehearing may be filed within 14 days after entry of  
3 judgment unless the time is shortened or enlarged by order.

4 (2) Contents. The petition must state with particularity each point of law or fact  
5 that the petitioner believes the court has overlooked or misapprehended and must  
6 argue in support of the petition. Oral argument is not permitted.

7 (3) Answer. Unless the court requests, no answer to a petition for rehearing is  
8 permitted. Ordinarily, rehearing will not be granted in the absence of such a  
9 request.

10 (4) Action by the Court. If a petition for rehearing is granted the court may do  
11 any of the following:

12 (A) make a final disposition of the case without reargument;

13 (B) restore the case to the calendar for reargument or resubmission;

14 (C) issue any other appropriate order.

15 (b) Form of Petition; Length. A petition for rehearing must comply in form with Rule 32. A  
16 petition for rehearing must contain all applicable items listed in Rule 28(b). Petitions for  
17 rehearing must comply with the following length requirements:

18 (1) ~~Word Limit for Proportional Typeface. If proportionately spaced typeface is used, a~~ A  
19 petition for rehearing may not exceed ~~2,000 words~~ 10 pages, excluding words in the table  
20 of contents, the table of citations, and any addendum. Footnotes or endnotes must be  
21 included in the ~~word~~ page count.

22 (2) ~~Page Limit for Monospaced Typeface. If monospaced typeface is used, a petition for~~  
23 rehearing may not exceed eight pages, excluding the table of contents, the table of  
24 citations, and any addendum.

25 (c) Service and Filing. Copies of a petition for rehearing must be served and filed as prescribed  
26 by Rule 25 and Rule 31(b).

1 **EXPLANATORY NOTE**

2 Rule 40 was amended, effective March 1, 2003; March 1, 2004; March 1, 2008; March 1, 2013;  
3 October 1, 2014, \_\_\_\_\_.

4 This rule is derived from Fed.R.App.P. 40.

5 Subdivision (b) was amended, effective March 1, 2003, to specify that a petition for rehearing  
6 must comply with the requirements of Rule 32.

7 Subdivision (b) was amended, effective March 1, 2004, to specify that a petition for rehearing  
8 must contain the elements specified in Rule 28 (b) that apply to the given petition. For example,  
9 a petition for rehearing that cites legal authorities must include a table of authorities as described  
10 in Rule 28 (b)(2).

11 Subdivision (b) was amended, effective March 1, 2008, to include length requirements for a  
12 petition for rehearing.

13 Subdivision (b) was amended, effective March 1, 2013, to decrease the page and type volume  
14 allowed in a petition for rehearing.

15 Subdivision (b) was amended, effective \_\_\_\_\_, , to use only page counts for filings.

16 Subdivision (c) was added, effective March 1, 2003, to clarify petition service and filing  
17 requirements and amended effective October 1, 2014, to conform the rule to electronic filing.

18 Rule 40 was amended, effective March 1, 2003, in response to the December 1, 1998,  
19 amendments to Fed.R.App.P. 40. The language and organization of the rule were changed to  
20 make the rule more easily understood and to make style and terminology consistent throughout  
21 the rules.

1 SOURCES: Joint Procedure Committee Minutes of September 26, 2013, page 28; January 26-27,  
2 2012, pages 8-9; September 30, 2011, pages 11-12; April 28-29, 2011, page 18-20; January 25,  
3 2007, page 19; April 24-25, 2003, page 14; April 25-26, 2002, page 25; May 25-26, 1978, pages  
4 19-20; March 16-17, 1978, pages 8-9. Fed.R.App.P. 40.

5 STATUTES AFFECTED:

6 SUPERSEDED: N.D.C.C. § 28-27-30.

7 CROSS REFERENCE: N.D.R.App.P. 28 (Briefs); N.D.R.App.P. 31 (Filing and Service of  
8 Briefs) ; N.D.R.App.P. 32 (Form of Briefs, Appendices, and Other Documents).