

IN THE SUPREME COURT

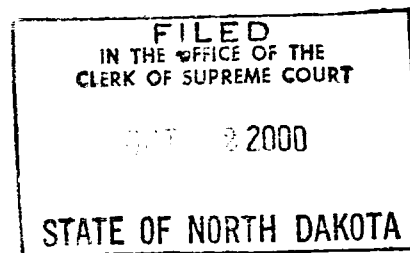
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STATE OF NORTH DAKOTA

Joint Procedure Committee,

Petitioner,

) PETITION FOR AMENDMENT
) OF N.D.R.Ct. 8.2
)
)
)



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 proposal:

North Dakota Rules of Court

Rule 8.2 - Interim Orders in Domestic Relations Cases

This petition is supported by the attached material containing the proposed rule, proposed explanatory note, and synopsis of the proposal.

Dated October 2, 2000.

Members of the Joint Procedure Committee:

Honorable Donovan Foughty
Honorable M. Richard Geiger
Honorable Gail Hagerty
Honorable Ronald L. Hilden
Honorable Maurice R. Hunke
Honorable Lawrence A. Leclerc
Honorable David W. Nelson
Honorable Mikal Simonson
Honorable Kirk Smith

Professor Larry Kraft
Mr. Michael R. Hoffman
Mr. John C. Kapsner
Mr. Daniel S. Kuntz
Mr. Ronald H. McLean
Ms. Patricia R. Monson
Ms. Sherry Mills Moore
Mr. James T. Odegard
Ms. Cathy Howe Schmitz
Mr. Michael G. Sturdevant

Justice Dale V. Sandstrom
Chair

ORIGINAL

SYNOPSIS OF PROPOSED AMENDMENT

20000276

E. North Dakota Rules of Court

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
OCT 2 2000
STATE OF NORTH DAKOTA

Rule 8.2, Interim Orders in Domestic Relations Cases.

An amendment to subdivision (c) provides a payment of child support or a combined payment of child support and spousal support must be paid to and through the State Disbursement Unit as required by N.D.C.C. § 14-09-08.1(1).

ORIGINAL

RULE 8.2 INTERIM ORDERS IN DOMESTIC RELATIONS CASES

20000276

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
FEB 2 2000
STATE OF NORTH DAKOTA

(a) Ex Parte Interim Order.

(1) No interim order may issue except upon notice and hearing unless the court specifically finds exceptional circumstances. Exceptional circumstances include:

(A) Threat of imminent danger to any party or minor child of the party; or

(B) Circumstances indicating that an ex parte order is necessary to protect the parties, any minor children of the parties, or the marital estate.

(2) No ex parte interim order may be issued unless the movant executes an affidavit setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the movant also appears personally and good cause is shown for issuance of the order.

(3) The provisions which may be included in an ex parte interim order are temporary custody, support and other appropriate expenses, use of real or personal property, restraining and eviction.

(4) If there has been an appearance in the action by the adverse party, or if the attorney for the moving party has knowledge that the adverse party is represented by an attorney, the attorney for the moving party shall notify the court. After receiving notice of the appearance or representation, the court shall attempt to hold an emergency hearing, either in person or by telephonic conference, at which both parties may be heard, before issuing

21 any order. The issuance of an order following an emergency hearing will in no manner affect
22 a party's right to a further hearing on the merits of the order as provided in Rule 8.2(a)(5).

23 (5) An interim order issued ex parte must provide specifically:

24 A. That the party to whom the order is directed, upon written motion may have a
25 hearing upon the necessity for the issuance of the order or the amounts to be paid; and

26 B. That unless the motion is served and filed in the office of the clerk of district court
27 within 10 days after service of the interim order, the order becomes final and is
28 nonappealable, pending a final determination of the issues raised by the pleadings or until
29 further order of the court in the event of a material change of circumstances.

30 C. That any hearing on the order must be held within 30 days from the date the
31 motion is filed, unless an earlier hearing is required under ~~chapter 14-07.1~~; N.D.C.C. ch. 14-
32 07.1, or an application for change of venue is pending. If the ex parte order contains
33 provisions delineated in ~~chapter 14-07.1~~; N.D.C.C. ch. 14-07.1, the hearing must be
34 scheduled in a timely manner to conform with the chapter.

35 (6) The ex parte interim order remains in effect until it is amended following a court
36 hearing.

37 (b) Interim Orders Upon Motion and Hearing.

38 (1) Support. An interim order may provide for payment of support and other
39 appropriate expenses. In the event support is ordered, a current mailing address must be
40 listed for both parties.

41 (2) Custody - Visitation. An interim order providing for temporary custody of minor
42 children may be granted, in which case the order must provide for reasonable visitation
43 rights, unless the evidence establishes that visitation should be restricted to certain times and
44 places or prohibited.

45 (3) Attorney's Fees and Costs. An interim order may provide for payment of attorney's
46 fees and costs if evidence establishes that a party has insufficient personal income or funds
47 with which to pay attorney's fees and costs.

48 (4) Use of Property. An interim order may provide for the use of real or personal
49 property, and for restraining and eviction.

50 (5) An interim order may not be amended except upon stipulation of the parties or in
51 the event of a material change of circumstances.

52 ~~(c) Payments to Clerk. The interim order must provide that all support payments be~~
53 ~~paid to and through the clerk of the district court. Payments must be in a manner acceptable~~
54 ~~to the clerk unless otherwise ordered by the court.~~

55 (c) Payment. The interim order must provide:

- 56 • for any spousal support payment to be paid to and through the clerk of
- 57 district court, and
- 58 • for any child support payment, or combined payment of child support and
- 59 spousal support, to be paid to and through the State Disbursement Unit.

60 Payment must be in a manner acceptable to the clerk or State Disbursement Unit unless
61 otherwise ordered by the court.

62 (d) Time for Hearing Upon Notice. If a notice of motion and motion are served to
63 obtain an interim order, the court shall hold a hearing no later than 30 days from the date of
64 filing the motion. If venue is changed before the hearing for an interim order is held, the
65 hearing for an interim order must be held no later than 30 days after venue is changed.

66 (e) Submission of Evidence.

67 (1) Financial Statement. In any proceedings under this rule, each party shall file an
68 itemized financial statement prepared as illustrated in appendix B.

69 (2) Affidavit. Unless the court otherwise orders, evidence either in support of or in
70 opposition to the interim order must be presented by affidavit. Evidence presented by
71 affidavit may not be considered unless, at the time of the evidentiary hearing, the party
72 offering the affidavit makes the affiant available for cross examination. ~~The party initially~~
73 ~~seeking interim relief shall proceed first at the hearing.~~

74 (3) Time for Service and Filing. The affidavits and itemized financial statement of
75 the moving party must be served and filed no later than ten days prior to the commencement
76 of the hearing. Respondent's affidavits and itemized financial statement must be served and
77 filed no later than three days prior to the commencement of the hearing.

78 (4) Order of Proceeding. ~~The party initially seeking interim relief shall proceed first~~
79 ~~at the hearing.~~

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EXPLANATORY NOTE

82 Rule 8.2 was amended, effective September 1, 1983; January 1, 1995; March 1, 1996;
83 March 1, 1999; March 1, 2001.

84 A motion for a change of venue must be promptly ruled upon in order to accomplish
85 the Committee's intent for interim orders to be expeditiously heard.

86 Subdivision (b)(5) was added, effective March 1, 2001.

87 Subdivision (c) was amended, effective March 1, 2001. When an order for child
88 support is entered, the order must provide for payment to and through the State
89 Disbursement Unit.

90 SOURCES: Joint Procedure Committee Minutes of September 28-29, 2000, pages
91 _____; January 27-28, 2000, pages 19-21; April 30-May 1, 1998, pages 8-9; April 27-28,
92 1995, pages 9-15; September 23-24, 1993, pages 16-17; April 20, 1989, page 17; April 26,
93 1984, page 17; September 30-October 1, 1982, pages 18-21; December 11-12, 1980, pages
94 3-4 and 7.