

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

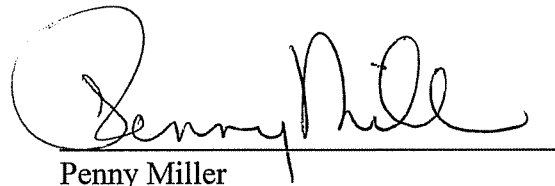
ORDER OF ADOPTION
Supreme Court No. 20070205

Proposed Amendments to the North Dakota Rules of Civil Procedure

On December 12, 2007, the Supreme Court approved amendments to N.D.R.Civ.P. 40 effective March 1, 2008. The approved amendments removed the Note of Issue/Certificate of Readiness, but did not delete the form associated with it. The explanatory note also refers to the Notice of Issue/Certificate of Readiness. The Supreme Court considered the matter, and

ORDERED, the Note of Issue/Certificate of Readiness form and the reference to the Note of Issue/Certificate of Readiness in the Explanatory Note are deleted effective March 1, 2008. A copy of N.D.R.Civ.P. 40, as amended, is attached.

The Supreme Court of the State of North Dakota convened February 20, 2008, with the Honorable Gerald W. Vandewalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller
Clerk

North Dakota Supreme Court

RULE 40. ASSIGNMENT OF CASES FOR TRIAL

(a) Continuous session of district court.

The district court is in continuous session in each county. Criminal and civil cases will be scheduled for trial in accordance with a calendaring procedure maintained and operated under the direction and supervision of the presiding judge of the district.

(b) [Deleted]

(c) Trial dates.

All contested cases will be assigned trial dates by the trial judge under the direction and supervision of the presiding judge of the district.

(d) Trial date continuances.

No continuance on trial dates will be given unless formally approved by the trial judge scheduled to hear the case. A request to continue a trial must be made within ten days after receipt of notice of trial given by the court. If unavoidable circumstances should arise, the trial judge may consider waiving the ten-day requirement.

(e) Untried cases.

Actions or proceedings that have been pending and filed in which there has been a want of prosecution for more than one year may be dismissed without prejudice by the court on its own motion upon notice or on motion of either party.

EXPLANATORY NOTE

Rule 40 was amended effective July 1, 1981; January 1, 1988; August 1, 2004;

22 March 1, 2008.

23 Rule 40 has the same purpose as Fed.R.Civ.P. 40.

24 Rule 40 was amended, effective March 1, 2008, to eliminate the note of issue and
25 certificate of readiness requirement. Decisions on placement of cases on the trial calendar
26 are made at Rule 16 scheduling conferences or as otherwise scheduled by the court.

27 Subdivision (a) provides for continuous session of district court, rather than distinct
28 "terms" of court. The presiding judge is to oversee the calendaring process.

29 ~~Subdivision (b) was amended, effective August 1, 2004, to add new language~~
30 ~~clarifying that filing a note of issue and certificate of readiness is not necessary when a~~
31 ~~scheduling order is issued.~~

32 Subdivision (e) provides for dismissal of untried cases after one year of inactivity,
33 rather than after two years, as was the previous rule. Failure to file a Note of Issue and
34 Certificate of Readiness within one year after the filing of the summons and complaint may
35 also result in dismissal.

36 The rule was amended, effective January 1, 1988, to make the rule gender neutral.

37 Sources: Joint Procedure Committee Minutes of April 26-27, 2007, pages 14-15;
38 September 18-19, 2003, pages 11-18; April 24-25, 2003, pages 26-30; November 7-8, 1991,
39 page 5; October 25-26, 1990, page 16; January 23, 1986, pages 9-12; September 18-19, 1980,
40 pages 13-14; May 29-30, 1980, pages 1-2, 6-11; March 27-28, 1980, pages 3-4; January 17-
41 18, 1980, page 3; November 29-30, 1979, pages 9-10; Rule 40, FRCivP.

42 Statutes Affected:

43 Superseded: N.D.R.C. 1943 §§ 28-1207, 28-1208, 28-1212.

44 Cross Reference: N.D.R.Civ.P. 16 (Pretrial Conferences; Scheduling; Management);

45 N.D.R.Crim.P. 50 (Calendars).

46 [Note of Issue and Certificate of Readiness Form deleted.]