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SUPREME COURT

*State of North Dakota*

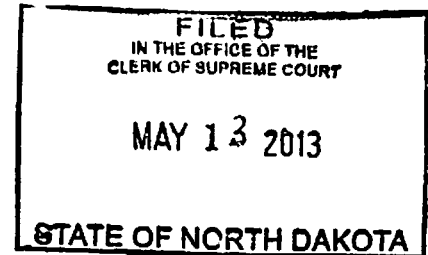
20130104

JOINT PROCEDURE COMMITTEE

CHAIR  
JUSTICE MARY MUEHLEN MARING  
STAFF ATTORNEY  
MICHAEL J. HAGBURG

FIRST FLOOR JUDICIAL WING  
600 E BOULEVARD AVE DEPT 180  
BISMARCK, ND 58505-0530

May 13, 2013



Honorable Gerald W. VandeWalle, Chief Justice  
North Dakota Supreme Court  
600 East Boulevard Avenue  
Bismarck, ND 58505-0530

Re: Supreme Court No. 20130104, Proposed Amendments to N.D.R.Ct. 3.5,  
Electronic Filing in the District Courts

Dear Chief Justice:

The Supreme Court recently adopted amendments to N.D.R.Ct. 3.5, subject to comment. The Joint Procedure Committee discussed these amendments at its April 2013 meeting and would like to offer its comments to the Court. The committee is also proposing limited additional amendments to Rule 3.5 and to N.D.R.Civ.P. 58 (Entry and Notice of Entry of Judgment). A copy of the proposed amendments is attached.

During the course of its discussion, the committee discovered that, while notice of filing is now sent out automatically to associated attorneys and parties when a document is submitted through the Odyssey® file and serve system, notice is not sent out when a clerk scans a document into the electronic case file through the Odyssey case management system. A motion was made and approved to recommend to the Court that clerks be required to send notice to associated attorneys and parties when they file a document signed by a judge, such as an order or warrant. The committee suggests that this notice be provided in the same manner as notice is provided when an attorney e-files a document. The committee understands that some clerks send notice of the filing of orders and warrants through daily cumulative lists, but the committee does not believe these lists are an adequate method of providing notice of the filing of judge-signed documents.

The committee discussed the burden on non-parties created by the e-filing requirement. A motion was made and approved to recommend that the rule's provisions allowing exemption from e-filing in Rule 3.5 be amended so that they would apply to anyone, not just to attorneys. This proposed change would allow non-parties to seek exemption from e-filing under exceptional circumstances. The suggested amendment is contained in the attached Rule 3.5 draft.

An additional motion was made to remove the “particular case” language from Rule 3.5's exemption provision. This motion was not approved as the committee concluded it would be preferable to maintain the default e-filing requirement for all system users and to allow exceptions only on a case-by-case. The committee also discussed, but did not approve, a motion to exempt all non-parties from the e-filing requirement. Supporters of the motion argued that non-parties such as medical providers are being alienated from working with the courts by the e-filing requirement. Supporters also argued that, in rural counties, it is difficult to find people to serve as guardians or custody reviewers and that requiring these people to e-file makes it more difficult to recruit them to assist the courts. Members opposed to the motion argued that medical providers had the resources either to e-file or to formally request exemptions, while rural county guardians and similar people would be likely candidates to receive exemptions from e-filing. The committee ultimately concluded that the proposed amendment allowing “anyone” to seek an exemption from e-filing adequately protected non-parties.

The committee was informed that some part-time state’s attorneys had made comments to the Court about what they interpreted as restrictions in Rule 3.5 on the number of service e-mail addresses a person could submit for listing on the Court’s website. A motion was made and approved to suggest amendment of Rule 3.5 to require attorneys to submit “at least one” service e-mail address to the Board of Law Examiners and to allow designated service addresses to be posted to the Court’s website. This suggested amendment is contained in the attached Rule 3.5 draft.

The committee discussed Rule 3.5's paragraph numbering requirement and the difficulties that some courts were having in implementing the requirement in court-generated documents. A motion was made and approved to submit a comment to the Court that in the case of jury instructions, paragraph numbering should not be required because it makes the documents look awkward and because the paragraph numbering can make the jury instructions difficult to amend. The consensus of the committee was that jury instructions without paragraph numbers would be easier to work with and easier for the jury to comprehend.

The committee discussed the possibility that e-filers will no longer be able to submit word processing documents through Odyssey® once a new contract is in place. It is the committee’s understanding that the vendor desires to limit e-filing to documents in .pdf format. A motion was made and approved to submit a comment to the Court that if at some point e-filing is limited to .pdf documents, Rule 3.5 should be amended to remove the paragraph numbering requirement. The consensus of the committee was that paragraph numbering in documents would no longer be essential if the original document pagination was retained when the document was e-filed, as it would be in the case of .pdf documents.

The committee was informed that the issue of e-filing and e-serving the Notice of Entry of Judgment had been raised in the comments to the Court on Rule 3.5. Acting on recommendations by the committee, the Court amended N.D.R.Civ.P. 58 effective March 1,

2013, to require parties to serve a copy judgment with the Notice of Entry of Judgment, but not to file this copy judgment. Now that e-filing and e-service is mandatory, there is confusion about how to satisfy Rule 58's unique filing and service requirement. A motion was made and approved to suggest an amendment to Rule 58 under which a party would be allowed to file a copy of the Notice of Entry with the copy judgment as an attachment. The suggested amendment is contained in the attached Rule 58 draft.

Thank you for your consideration of the Joint Procedure Committee comments and suggestions related to electronic filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Muehlen Maring". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Mary Muehlen Maring  
Chair, Joint Procedure Committee

RULE 3.5. ELECTRONIC FILING IN THE 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 must be filed electronically except for documents filed by self-represented litigants and prisoners. After June 1, 2013, initiating pleadings must be filed electronically in civil, non-juvenile, cases. A party who files a complaint in a civil case must electronically serve notice of filing on the other parties or their attorneys.

(3) On a showing of exceptional circumstances in a particular case, ~~an attorney~~ 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.

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

(5) 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.

(b) Filing formats.

(1) Approved formats for documents filed electronically are WordPerfect (.wpd),

22 Word (.doc or.docx), Tagged Image File (.tif), Portable Document File (.pdf) and ASCII  
23 (.txt).

24 (2) All paragraphs must be numbered in documents filed electronically. Reference  
25 to material in such documents must be to paragraph number, not page number. Paragraph  
26 numbering is not required in exhibits, documents prepared before the action was  
27 commenced, or in documents not prepared by the parties or court.

28 (c) Time of filing.

29 (1) A document in compliance with the rules and submitted electronically to the  
30 district court clerk by 11:59 p.m. local time is considered filed on the date submitted.

31 (2) After reviewing an electronically filed document, the district court clerk must  
32 inform the filer, through an e-mail generated by the Odyssey® system, whether the  
33 document has been accepted or rejected.

34 (3) If a document submitted for electronic filing is rejected, the time for filing is  
35 tolled from the time of submission to the time the e-mail generated by the Odyssey®  
36 system notifying the filer of rejection is sent. The document will be considered timely  
37 filed if resubmitted within three days after the notice of rejection. A party seeking to take  
38 advantage of this tolling provision must file and serve a separate document providing  
39 notice that the rejected document is being resubmitted under N.D.R.Ct. 3.5(c)(3).

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

42 (d) Confidentiality. In documents prepared for filing with the court, information

43 that would otherwise be included in the document but required by N.D.R.Ct. 3.4 to be  
44 redacted in court documents must be separately filed in a reference sheet (confidential  
45 information form, see appendix) and may be included in those documents only by  
46 reference. Any document not complying with this order is subject to N.D.R.Ct. 3.4(g).

47 (e) Electronic service.

48 (1) All documents filed electronically after the initiating pleadings must be served  
49 electronically through the Odyssey® system except for documents served on or by self-  
50 represented litigants and prisoners. On a showing of exceptional circumstances in a  
51 particular case, ~~an attorney~~ anyone may be granted leave of court to serve paper  
52 documents or to be exempt from receiving electronic service. Attorneys who are required  
53 by rule or statute to serve documents on their own clients may serve paper documents.

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

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

60 (4) For purposes of computation of time, any document electronically served must  
61 be treated as if it were mailed on the date of transmission. If an attorney who is not  
62 exempt from electronic service fails to provide an e-mail address for service or fails to  
63 accept or open electronically served e-mail, the server's attempt at electronic service

64 constitutes delivery. Service made impossible due to an attorney's failure to provide an e-  
65 mail address must be shown by an affidavit or certificate of attempted service.

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

#### 69 EXPLANATORY NOTE

70 Adopted effective January 15, 2013; amended effective April 15,  
71 2013;\_\_\_\_\_.

72 Rule 3.5 was originally adopted as N.D.Sup.Ct.Admin.O. 16 on March 1, 2006.  
73 Order 16 was later amended, effective March 1, 2008; March 1, 2009; August 1, 2010;  
74 March 1, 2011; and July 1, 2012.

75 Order 16 was amended, effective July 1, 2012, to incorporate the provisions of the  
76 Order 16 Addendum (Filing in the District Court where Odyssey(R) Electronic Filing is  
77 Available) and N.D.Sup.Ct.Admin.O. 18 (Filing in Counties Using the Odyssey(R) Case  
78 Management System). The Order 16 Addendum and Order 18 were repealed, effective  
79 July 1, 2012.

80 Sources: Joint Procedure Committee Minutes of April 25-26, 2013, pages\_\_\_\_\_;  
81 January 31-February 1, 2013, pages 2-5, 15-18; September 27, 2012, pages 14-21; April  
82 29-30, 2010, page 21; April 24-25, 2008, pages 12-16; October 11-12, 2007, pages 3-5;  
83 April 26-27, 2007, pages 16-18; January 25, 2007, pages 15-16; Sept 23-24, 2004, pages  
84 18-27.

85                   Cross References: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the  
86                   Court); N.D. Admission to Practice R. 1 (General Requirements for Admission).



**RULE 58. ENTRY AND NOTICE OF ENTRY OF JUDGMENT**

**(a) Entry of Judgment.**

**(1) Appropriate Judgment.** On the filing of an order for judgment, the prevailing party must submit to the clerk an appropriate form of the judgment. The clerk must sign and file the judgment and enter it in the register of civil actions, at which time the judgment becomes effective.

**(2) Failure to Submit Judgment.** If the prevailing party fails to submit to the clerk an appropriate form of the judgment within 30 days after the order for judgment is filed, any party may submit an appropriate form without prejudice to any rights that party may have to challenge it.

**(3) Judgment for Sum Certain.** If the judgment directs the payment of money for a sum certain, or a sum that can be made certain by calculation, the clerk must also docket the judgment in the judgment docket as provided by law.

**(b) Notice of entry of judgment.**

**(1) In General.** A notice of entry of judgment must identify the docket number and the date the judgment was signed.

**(2) Service.** Within 14 days after entry of judgment in an action in which an appearance has been made, notice of entry of judgment in compliance with Rule 58(b)(1) must be served by the prevailing party on the opposing party. A copy of the judgment must be served with the notice of entry.

22 (3) Filing. The prevailing party must file the notice of entry of judgment. ~~The~~ A copy  
23 of the judgment may not be filed as an attachment to the notice of entry.

24 (4) Post Judgment Motion or Appeal. Service of notice of entry of judgment is not  
25 required to begin the time for filing a post-judgment motion or an appeal if the record clearly  
26 evidences actual knowledge of entry of judgment through the affirmative action of the  
27 moving or appealing party.

#### 28 EXPLANATORY NOTE

29 Rule 58 was amended, effective January 1, 1988; December 19, 1990; March 1, 2000;  
30 March 1, 2011; March 1, 2013:\_\_\_\_\_.

31 Subdivision (a) was amended, effective January 1, 1988, to change the document  
32 where the judgment must be entered from the judgment book to the register of civil actions.

33 Subdivision (b) was adopted, effective March 1, 2000. Subdivision (b) was formerly  
34 subdivision (d) of Rule 77.

35 Although subdivision (b) only refers to a judgment, Rule 54(a) defines a judgment as  
36 including "any order from which an appeal lies."

37 Subdivision (b) incorporates the case law exception holding service of notice of entry  
38 of judgment is not required to start the time running for filing a post-judgment motion or an  
39 appeal if the record clearly evidences actual knowledge of entry of judgment by the  
40 affirmative action of the moving or appealing party.

41 Subdivision (b) was amended, effective March 1, 2011, to increase the time to serve  
42 and file the notice of entry of judgment from 10 to 14 days after entry of judgment.

43           Subdivision (b) was amended, effective March 1, 2013, to require the prevailing party  
44           to identify the docket number and the date the judgment was signed in the notice of entry of  
45           judgment; to serve a copy of the judgment with the notice of entry; and to file the notice of  
46           entry of judgment, ~~but not a copy of the judgment.~~

47           Rule 58 was amended, effective March 1, 2011, in response to the December 1, 2007,  
48           revision of the Federal Rules of Civil Procedure. The language and organization of the rule  
49           were changed to make the rule more easily understood and to make style and terminology  
50           consistent throughout the rules.

51           Sources: Joint Procedure Committee Minutes of \_\_\_\_\_; April 26-  
52           27, 2012, pages 3-7; January 26-27, 2012, pages 9-12; September 30, 2011, pages 22-27;  
53           April 29-30, 2010, page 15; January 28-29, 2010, page 10; September 24-25, 1998, page 16;  
54           September 18-19, 1986, pages 3-4; September 26-27, 1985, pages 3, 9; November 29-30,  
55           1979, pages 17-18.

56           Cross Reference: N.D.R.Civ.P. 54 (Judgment Costs); N.D.R.Civ.P. 77 (District Courts  
57           and Clerks); N.D.R.Ct. 7.1 (Judgments, Orders and Decrees).