



To: Penny Miller, Clerk of the Supreme Court  
From: Anne Jorgenson Green, Staff Counsel, Workforce Safety and Insurance  
Re: Comments to Proposed amendments to North Dakota Rules of Court 3.5

1. Comment to Proposed Amendments of North Dakota Rules of Court 3.5

Proposed Rule of Court 3.5(a)(2) requires notice of filing on "other parties or their attorneys." Section 3.5(e) exempts self-represented litigants. The proposed amendment to the rule requires appears to require notice to attorneys where none is required to self-represented individuals and where no notice was previously required under the rules.

A defendant who neither appears nor answers is not entitled to notice when judgment documents are filed with the Court. See First Nat'l Bank v. Hoggarth, 331 N.W.2d 271 (1983). In a collection action for unpaid premium, we file the properly served summons and compliant with the Court after the Answer period has elapsed. Once twenty plus three for service have elapsed, WSI files a Motion of Intention to Take Default Judgment (in the case of an appearance) or the Judgment documents (where there has been no appearance). Under the proposed amendment, a defendant who secures the services of an attorney sometime after the time to appear or answer has passed is permitted notice before Judgment entry, notice not given to the unrepresented individual nor required before the proposed amendment to the rule.

Knowing the Court prefers to rule on the merits, the proposed rule provides one additional "bite at the apple" for the represented defendant, and most likely an opportunity to Answer. An unrepresented litigant will not receive this additional notice. The rule should treat both represented and unrepresented defendants the same: by permitting the practice of permitting attorneys to file complaints simultaneously with judgment docs (as a matter of efficiency) without requiring additional service, unneeded and unwarranted prior to the proposed rule.