

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20130104

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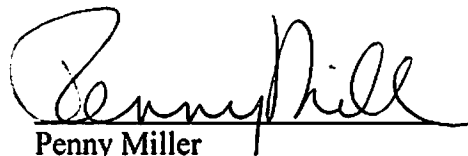
**Proposed Amendment of North Dakota Rules of Court 3.1 and 3.5  
and North Dakota Admission to Practice Rule 1 Regarding Electronic Service  
and North Dakota Rules of Civil Procedure 58**

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[¶1] On April 11, 2013, the Supreme Court adopted amendments to North Dakota Rules of Court 3.1 and 3.5 and North Dakota Admission to Practice Rule 1 Regarding Electronic Service, which were effective April 15, 2013, and subject to a 30-day comment period. Comments were received and the Joint Procedure Committee proposed amendments to North Dakota Rules of Court 3.5 and North Dakota Rules of Civil Procedure 58. The Court considered the matter, and

[¶2] ORDERED, that the amendments North Dakota Rules of Court 3.5 and North Dakota Rules of Civil Procedure 58, as proposed by the Joint Procedure Committee, are ADOPTED effective June 1, 2013. No further amendments were adopted for North Dakota Rule 3.5 or North Dakota Admission to Practice Rule 1.

[¶3] The Supreme Court of the State of North Dakota convened 30th day of May, 2013, with the Honorable Gerald W. Vandewalle, Chief Justice, Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner, and 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 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, 2013; June 1,  
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; June 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 25-26, 2013, pages \_\_\_\_\_; April  
52 26-27, 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).