

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**

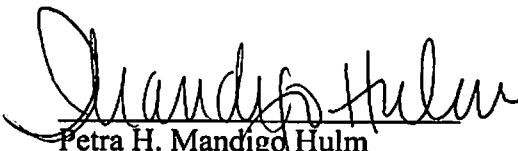
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[¶1] On April 10, 2013, and April 11, 2013, the Supreme Court considered proposed amendments to North Dakota Rules of Court 3.1 and 3.5 and North Dakota Admission to Practice Rule 1 Regarding Electronic Service. The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶2] ORDERED, that, as further amended, the amendments to North Dakota Rules of Court 3.1 and 3.5 and North Dakota Admission to Practice Rule 1 are ADOPTED effective April 15, 2013, subject to a 30-day comment period.

[¶3] IT IS FURTHER ORDERED, any person wishing to comment on the amendments may do so in writing before **Monday, May 13, 2013**. Written comments may be e-mailed to Penny Miller, Clerk of the Supreme Court, at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov), or addressed to 600 E. Boulevard Ave., Bismarck, ND 58505-0530.

[¶4] The Supreme Court of the State of North Dakota convened 11th day of April, 2013, with the Honorable Gerald W. VandeWalle, Chief Justice, Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, and the Honorable Daniel J. Crothers, Justices, directing the Clerk of the Supreme Court to enter the above order. The Honorable Carol Ronning Kapsner, being unavoidably absent, did not participate in the decision.

  
Petra H. Mandigo Hulm  
Chief Deputy Clerk  
North Dakota Supreme Court

RULE 1. GENERAL REQUIREMENTS FOR ADMISSION

A. No person may be admitted to practice as an attorney and counselor at law in this state unless the person:

1. is at least eighteen (18) years of age;
2. is of good moral character and fit to practice law;
3. has designated the Clerk of the Supreme Court as the applicant's agent for service of process for all purposes;
4. has received a juris doctor or equivalent degree from a law school approved or provisionally approved for accreditation by the American Bar Association;
5. has complied with either Rule 6 or Rule 7;
6. has taken the oath and pledge required by *Section 27-11-20, North Dakota Century Code*; and
7. has paid all required fees.

B. Duty to Cooperate.

An applicant has the duty to cooperate with the State Board of Law Examiners (Board) by timely complying with requests, including requests to:

1. provide complete information, documents and signed authorizations for release of information;
2. obtain reports or other information necessary for the Board to properly evaluate the applicant's character and fitness to practice law; and
3. appear for interview to determine eligibility for admission or facilitate the background investigation.

24 An applicant shall not discourage a person from providing information to the Board or  
25 retaliate against a person for providing information to the Board.

26 An applicant who violates this rule may be denied an opportunity to test or may be  
27 denied admission.

28 C. Continuing Obligation.

29 1. An applicant has a continuing obligation to update the application with respect to all  
30 matters inquired of on the application. This obligation continues during the pendency of the  
31 application, including the period when the matter is on review to the Board or the Supreme  
32 Court.

33 2. Whenever a lawyer admitted to practice in this state moves from the address listed in  
34 the Board of Law Examiners records or when the name of a lawyer is changed by marriage or  
35 otherwise, that lawyer shall within ten days thereafter notify the Board or the Clerk of the  
36 Supreme Court, in writing, of that person's old and new addresses or of such former and new  
37 names held by that lawyer.

38 3. An attorney admitted to practice in this state has a continuing obligation to  
39 provide a current e-mail address for the purpose of receiving electronic service under  
40 N.D.R.Ct. 3.5.

41 [Amended effective August 1, 2001; March 1, 2009; April 1, 2013; April 15, 2013.]

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RULE 3.1. PLEADINGS

(a) Legibility and Numbering. All pleadings and other documents must be typewritten, printed, or reproduced and easily readable. Each sheet must be separately numbered. Pleadings and other documents filed with the court, except as otherwise permitted by the court, must be prepared on 8 1/2 x 11 inch white paper.

(b) Signature. All pleadings and other documents of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name and contain the attorney's address, telephone number, e-mail address for electronic service, and State Board of Law Examiners identification number. All pleadings and other documents of a party who is not represented by an attorney must be signed by the party and contain the party's address and telephone number.

(c) Spacing and Names. Writing must appear on one side of the sheet only and must be double-spaced, except for quoted material. Names must be typed or printed beneath all signatures.

(d) Binding. All pleadings or other documents in an action or proceeding must be filed by the clerk flat and unfolded and each set of papers firmly fastened together.

(e) Filing of Documents. A party seeking to file a pleading or other document must submit it to the clerk. The first submitted version of a pleading or document will be treated as the original unless otherwise ordered by the court. A party need only file the original demand for change of judge.

(f) Lost Papers. If any original document is lost or withheld by any person, the court may authorize a copy to be filed.

(g) File Numbers. The clerk, at the time of the filing of a case and at the time of the filing

24 of any responsive pleading, must assign a file number to the case and immediately notify the  
25 attorney of record of the assigned file number. Thereafter, all documents and pleadings to be filed  
26 must bear the assigned file number on the front or title page in the upper righthand portion of the  
27 document to be filed.

28 (h) Proof of Service Required. Proof of service must accompany pleadings and documents  
29 submitted to the clerk for filing, unless a rule or statute requires a document to be filed before it is  
30 served.

31 (i) Privacy Protection. Parties must follow privacy protection instructions in N.D.R.Ct. 3.4  
32 when making filings with the court. Court personnel have no duty to review documents for  
33 compliance with N.D.R.Ct. 3.4.

34 (j) Non-Conforming Documents.

35 (1) Documents and pleadings that do not conform to this rule may not be filed.

36 (2) If a non-conforming document is filed by mistake, the court on motion or on its own may  
37 order the pleading or other document reformed. If the order is not obeyed, the court may order the  
38 document stricken and its service to be of no effect.

39 EXPLANATORY NOTE

40 Rule 3.1 was amended, effective January 1, 1988; March 1, 1996; March 1, 1999; August  
41 1, 2001; March 1, 2005; March 1, 2007; March 1, 2009; May 1, 2012; March 1, 2013; April 15,  
42 2013.

43 Rule 3.1 was reorganized, effective May 1, 2012, to make it clear that all documents  
44 presented for filing must conform to all applicable requirements of the rule.

45 A new subdivision (b) was added, effective March 1, 1996, which contains signature  
46 requirements. The letter designation of each existing subdivision was amended accordingly.

47           Subdivision (b) was amended, effective April 15, 2013, to require the e-mail address for  
48 electronic service under Rule 3.5 to be provided in filed documents.

49           A new subdivision (e) was added, effective March 1, 2005, to clarify that documents must  
50 be filed with the clerk. Submitting a document to a judge or to court personnel other than the clerk  
51 does not constitute filing. The first version of a given document submitted to the clerk, regardless  
52 of what form it is in, will be filed and treated as the original. A party seeking to correct the original  
53 or have another document treated as the original must obtain an order from the court.

54           Subdivision (e) was amended, effective May 1, 2012, to specify that a party making a  
55 demand for change of judge may file only one original. This provision supersedes the requirement  
56 in N.D.C.C. 29-15-21 that a demand for change of judge be filed in triplicate.

57           Subdivision (h) was amended, effective March 1, 2013, to clarify that, unless a rule or statute  
58 requires a document to be filed before it is served, proof of service must accompany any document  
59 submitted for filing.

60           Subdivision (i) was amended, effective March 1, 2007, to specify that court personnel have  
61 no duty to review documents for compliance with privacy protection rules.

62           Subdivision (i) was amended, effective March 1, 2009, to reflect the transfer of document  
63 privacy protection requirements to N.D.R.Ct. 3.4.

64           Sources: Joint Procedure Committee Minutes of September 27, 2012, page 14; January 26-  
65 27, pages 16-17; January 24, 2008, pages 9-12; October 11-12, 2007, pages 28-30; April 26-27,  
66 2007, page 31; September 22-23, 2005, pages 16-17; September 23-24, 2004, pages 3-5; April 29-  
67 30, 2004, pages 6-13, 17-25; January 29-30, 2004, pages 3-8; September 16-17, 2003, pages 2-11;  
68 April 24-25, 2003, pages 6-12; January 29-30, 1998, page 22; September 29-30, 1994, pages 6-7.

69           Statutes Affected: Superseded: N.D.C.C. § 29-15-21 (in part).

70 Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers);  
71 N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers; Representations to Court;  
72 Sanctions); N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court); N.D.R.Ct. 3.5  
73 (Electronic Filing in the District Courts); N.D.Sup.Ct.Admin.R. 41 (Access to Judicial Records).

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(R) electronic filing system.

(2) ~~After April 1, 2013, all~~ 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 ~~good cause~~ exceptional circumstances in a particular case, an attorney 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), Word (.doc or.docx), Tagged Image File (.tif), Portable Document File (.pdf) and ASCII (.txt).

(2) All paragraphs must be numbered in documents filed electronically. Reference to material in such documents must be to paragraph number, not page number. Paragraph numbering is not



24 required in exhibits, documents prepared before the action was commenced, or in documents not  
25 prepared by the parties or court.

26 (c) Time of filing.

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

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

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

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

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

45 (e) Electronic service.

46 (1) ~~A party who files a document electronically must serve the document by electronic means~~

47 ~~if the recipient consents to accept documents served electronically. After April 1, 2013, all~~ All  
48 documents filed electronically after the initiating pleadings must be served electronically through  
49 the Odyssey® system except for documents served on or by self-represented litigants and prisoners.  
50 On a showing of ~~good cause~~ exceptional circumstances in a particular case, an attorney may be  
51 granted leave of court to serve paper documents or to be exempt from receiving electronic service.  
52 Attorneys who are required by rule or statute to serve documents on their own clients may  
53 serve paper documents.

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

57 (3) ~~After April 1, 2013, any party not exempt from electronic filing must designate~~ All  
58 attorneys must provide an e-mail address to the State Board of Law Examiners for accepting  
59 electronic service. This email address will be posted on the North Dakota Supreme Court website.

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

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

68 EXPLANATORY NOTE

69 Adopted effective January 15, 2013; amended effective April 15, 2013.

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

73 Order 16 was amended, effective July 1, 2012, to incorporate the provisions of the Order  
74 16 Addendum (Filing in the District Court where Odyssey(R) Electronic Filing is Available) and  
75 N.D.Sup.Ct.Admin.O. 18 (Filing in Counties Using the Odyssey(R) Case Management System).  
76 The Order 16 Addendum and Order 18 were repealed, effective July 1, 2012.

77 Sources: Joint Procedure Committee Minutes of January 31-February 1, 2013, pages 2-5,  
78 15-18; September 27, 2012, pages 14-21; April 29-30, 2010, page 21; April 24-25, 2008, pages  
79 12-16; October 11-12, 2007, pages 3-5; April 26-27, 2007, pages 16-18; January 25, 2007, pages  
80 15-16; Sept 23-24, 2004, pages 18-27.

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