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October 4, 2013

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

Re: Proposed Amendments to North Dakota Court Rules
Supreme Court No. 20130261

Dear Chief Justice:

The Joint Procedure Committee submitted its annual Petition for Adoption, Amendment or Repeal of Court Rules to the Supreme Court on August 26, 2013. At its September meeting, the committee discussed issues related to proposals contained in the August 26 petition.

The committee offers the following suggestions regarding possible further amendments related to proposed rule amendments now pending before the Court:

N.D.R.Civ.P. 5 – Service and Filing of Pleadings and Other Documents

Proposed amendments to Rule 5 related to attorney e-mail addresses are currently before the Court. At its September meeting, the committee had additional discussions about Rule 5 after Judge Sonna Anderson pointed out that attorneys may not be taking the service requirements of N.D.R.Ct. 11.2 into account when serving their clients with notices of motions to withdraw. The committee suggests that a cross reference to Rule 11.2 and language explaining Rule 11.2's service requirements be added to Rule 5's explanatory note.

A copy of proposed amendments to Rule 5, including the amendment suggested above as well as the amendments currently pending before the Court, is attached.

N.D.R.Civ.P. 6 – Computing and Extending Time: Time for Motion Papers

Proposed amendments to N.D.R.Civ.P. 6’s explanatory note discussing bars to extension of time for certain motions are currently pending before the Court. At the September meeting, the committee discussed an error and an omission in the rule’s provision barring extension of time for certain motions. The committee determined that language in Rule 6(b)(2) barring time extensions for new trial motions under N.D.R.Civ.P. 59(c) was in error because Rule 59(c) allows the court, for good cause shown, to extend the time for a motion. The committee suggests that an amendment to delete the reference to Rule 59(c) be made to Rule 6(b)(2).

The committee also discussed language in Fed.R.Civ.P. 6(b)(2) that bars time extensions under Fed.R.Civ.P. 50(b) and (d). The committee suggests that an amendment making N.D.R.Civ.P. 6(b)(2) consistent with the federal rule be approved, given that N.D.R.Civ.P. 50(b) and (d) contain firm 28-day motion deadlines similar to the federal deadlines.

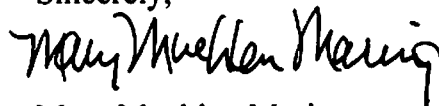
A copy of proposed amendments to Rule 6, including the amendments suggested above as well as the amendments currently pending before the Court, is attached.

N.D. Sup. Ct. Admin. R. 13 – Judicial Referees

Proposed amendments to Admin. Rule 13 related to small claims and traffic court proceedings are currently before the Court. The Court amended Admin. Rule 13 effective September 1, 2013, after the committee submitted its proposed amendments. The committee discussed the Court’s amendments at its September meeting and suggests that its proposed amendments be inserted into the current version of Admin. Rule 13 rather than the previous version, as in the petition. A copy of the committee’s proposed amendments to Admin. Rule 13, inserted into the current version of the rule, is attached.

The committee appreciates the Court’s consideration of these suggestions. Thank you for your attention to this matter.

Sincerely,



Mary Muehlen Maring
Chair, Joint Procedure Committee

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

(a) Service – When required.

(1) In general. Other than service of a summons and complaint under Rule 4, each of the following documents must be served under this rule on every party, unless the rules provide otherwise:

(A) an order, unless the court orders otherwise;

(B) a pleading served after the original summons and complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery document required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document; and

(F) every document filed with the clerk or submitted to the judge.

(2) If a party fails to appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an answer, claim, or appearance must be made on the person who had custody or possession of the property when

22 it was seized.

23 (b) Service -- How made.

24 (1) Service in general. A document that is required to be filed must be served
25 electronically under the procedure specified in N.D.R.Ct. 3.5. Electronic service on an
26 attorney must be made to the designated e-mail service address posted on the N.D. Supreme
27 Court website. Electronic service is complete on transmission, ~~but is not.~~ Except as provided
28 in N.D.R.Ct. 3.5(e)(4), electronic service is not effective if the serving party learns through
29 any means that the document did not reach the person to be served.

30 (2) Persons Served.

31 (A) Service on a Party Represented by an Attorney. If a party is represented by an
32 attorney, service under this rule must be made on the attorney unless the court orders service
33 on the party. If an attorney is providing limited representation under Rule 11(e), service must
34 be made on the party and on the attorney for matters within the scope of the limited
35 representation.

36 (B) Persons Exempt from Electronic Service. Persons who are exempt from electronic
37 service and filing under N.D.R.Ct. 3.5 must serve documents under Rule 5(b)(3).

38 (3) Other Service. A document that is not required to be filed, or that will be served
39 on a person exempt from electronic service, is served under this rule by:

40 (A) handing it to the person;

41 (B) leaving it:

42 (i) at the person's office with a clerk or other person in charge, or, if no one is in

43 charge, leaving it in a conspicuous place in the office; or

44 (ii) if the person has no office or the office is closed at the person's dwelling or usual
45 place of abode with someone of suitable age and discretion who resides there;

46 (C) mailing it to the person's last known address, in which event service is complete
47 upon mailing;

48 (D) sending it by a third-party commercial carrier to the person's last known address,
49 in which event service is complete upon deposit of the document to be served with the
50 commercial carrier;

51 (E) if no address is known, on order of the court by leaving it with the clerk of the
52 court;

53 (F) sending it by electronic means if the person consented in writing, in which event
54 service is complete on transmission, but is not effective if the serving party learns that it did
55 not reach the person to be served; or

56 (G) delivering it by any other means that the person consented to in writing.

57 (c) Serving numerous defendants.

58 (1) In general. If an action involves an unusually large number of defendants, the court
59 may, on motion or on its own, order that:

60 (A) defendants' pleadings and replies to them need not be served on other defendants;

61 (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings
62 and replies to them will be treated as denied or avoided by all other parties; and

63 (C) filing any such pleading and serving it on the plaintiff constitutes notice of the

64 pleading to all parties.

65 (2) Notifying parties. A copy of every such order must be served on the parties as the
66 court directs.

67 (d) Filing.

68 (1) In general. Unless a statute, court rule, or court order provides otherwise, all
69 documents in an action must be filed with the clerk electronically, through the Odyssey®
70 system.

71 (2) Initiating pleading.

72 (A) The Summons and Complaint.

73 (i) The summons and complaint, or other initiating pleading, must be filed before a
74 subpoena may be issued. Unless otherwise authorized by rule or statute, a party seeking to
75 file an initiating pleading must provide proof that the pleading was served under Rule 4. The
76 proof of service must be filed with the initiating pleading.

77 (ii) A party who files a complaint or other initiating pleading must serve notice of
78 filing on the other parties.

79 (iii) The defendant may demand that the plaintiff file the complaint.

80 – Service of the demand must be made under Rule 5(b) on the plaintiff's attorney or
81 under Rule 4(d) on the plaintiff if the plaintiff is not represented by an attorney.

82 – In cases with multiple defendants, service of a demand by one defendant is effective
83 for all the defendants.

84 – If the plaintiff does not file the complaint within 20 days after service of the

85 demand, service of the summons is void.

86 – The demand must contain notice that if the complaint is not filed within 20 days,
87 service of the summons will be void, unless, after motion made within 60 days after service
88 of the demand for filing, the court finds excusable neglect.

89 (iv) The defendant may file the summons and complaint, and the costs incurred on
90 behalf of the plaintiff may be taxed as provided in Rule 54(e).

91 (B) The Answer. Within a reasonable time after service of the notice of filing the
92 complaint or initiating pleading, the defendant or respondent must file the answer and notify
93 the plaintiff of the filing.

94 (3) Discovery materials. A party must not file discovery materials with the clerk
95 unless:

96 (A) the materials are being submitted to the court for disposition of a pending motion;

97 (B) the court orders them to be filed; or

98 (C) a party certifies that the filing is necessary for safekeeping of the documents or
99 exhibits pending case completion, in which event the party must state the reasons safekeeping
100 is necessary.

101 (4) Return of discovery materials.

102 (A) The clerk shall return the following documents to the filing party upon final
103 disposition of an appeal or, if no appeal is filed, upon expiration of the time for appeal:

104 (i) depositions;

105 (ii) interrogatories;

- 106 (iii) requests for admission;
- 107 (iv) requests for interrogatories;
- 108 (v) requests for production of documents; and
- 109 (vi) answers and responses to the above documents.

110 (B) If the filing party does not claim a filed document within 60 days after notification
111 to do so, the clerk may dispose of the document as directed by court order.

112 (C) The clerk must take a receipt for all documents returned.

113 (5) Documents to be used on hearing. Unless otherwise directed by the court, all
114 affidavits, notices, and other document designed to be used on the hearing of a motion or
115 order to show cause must be filed at least 24 hours before the hearing.

116 (6) Failure to comply. If a party fails to comply with this subdivision, the court, on
117 motion of any party or its own motion, may order the document to be filed. If the order is not
118 obeyed, the court may order them to be regarded as stricken and their service to be
119 ineffective.

120 (7) Rejection. Except as otherwise provided under Rules 13, 14, or 15, the clerk must
121 reject for filing any document that adds a party to an action or proceeding without a court
122 order. The clerk must endorse on the document a notation that it is rejected for filing under
123 this rule and return the document to the person who tendered it for filing.

124 (e) Removal of pleadings for service. Upon a filing party's request, an original
125 pleading or paper document in any civil action, which by law is required to be filed in the
126 clerk of court's office where the action is pending, may be removed from the files for the

127 purpose of serving it either inside or outside the state but must be returned without delay.

128 (f) Proof of service. Proof of service under this rule is made as provided in Rule 4 or
129 by an attorney's or court personnel's certificate showing that service was made under
130 subdivision (b).

131 EXPLANATORY NOTE

132 Rule 5 was amended effective 1971, July 1, 1981; March 1, 1986; January 1, 1988;
133 March 1, 1990; March 1, 1992, on an emergency basis; March 1, 1994; January 1, 1995;
134 March 1, 1998; March 1, 1999; March 1, 2003; March 1, 2008; March 1, 2009; March 1,
135 2011; March 1, 2013; April 1, 2013;_____.

136 Rule 5 applies to service of documents other than "process." In contrast, Rule 4
137 governs civil jurisdiction and service of process. When a statute or rule requiring service
138 does not pertain to service of process, nor require personal service under Rule 4, nor specify
139 how service is to be made, service may be made as provided in Rule 5(b). An example of
140 a rule that requires a particular type of service is N.D.R.Ct. 11.2, which specifies that
141 attorneys seeking to withdraw from representation must give notice to their client "by
142 personal service, by registered or certified mail, or via a third-party commercial carrier
143 providing a traceable delivery."

144 Subdivision (a) was amended, effective March 1, 2008, to improve organization and
145 to make the subdivision easier to understand.

146 Paragraph (b)(1) was amended, effective March 1, 2009, to make it clear that, when
147 an attorney has served notice of limited representation under Rule 11(e), service of

148 documents on the attorney is not required except for documents within the scope of the
149 limited representation. Rule 5, Rule 11 and N.D.R.Ct. 11.2, were amended to permit
150 attorneys to assist otherwise self-represented parties on a limited basis without undertaking
151 full representation of the party.

152 Paragraph (b)(1) was amended, effective _____, to require any
153 electronic service on an attorney to be made to the attorney's designated e-mail address as
154 posted on the North Dakota Supreme Court website.

155 Paragraph (b)(2) was amended, effective April 1, 2013, to specify that electronic
156 service through the Odyssey® system under the procedure specified in N.D.R.Ct. 3.5 is
157 required for most documents that will be filed with the court.

158 Paragraph (b)(3) was amended, effective March 1, 2009, to provide for service by
159 electronic means and to improve organization. Parties seeking to serve documents by
160 electronic means must consult N.D.R.Ct. 3.5 for electronic service instructions.

161 Paragraph (b)(3) was amended, effective April 1, 2013, to specify that the other means
162 of service listed in the paragraph apply only when the document served is not required to be
163 filed or when it will be served on a person exempt from electronic service.

164 Subdivision (b) was amended, effective March 1, 1999, to permit service via a third-
165 party commercial carrier as an alternative to the Postal Service. The requirement for a "third-
166 party commercial carrier" means the carrier may not be a party to nor interested in the action,
167 and it must be the regular business of the carrier to make deliveries for profit. A law firm
168 may not act as or provide its own commercial carrier service with service complete upon

169 deposit. In addition, the phrase "commercial carrier" does not include electronic delivery
170 services.

171 Paragraph (d)(1) was amended, March 1, 2008, to delete a reference to the note of
172 issue and certificate of readiness.

173 Paragraph (d)(1) was amended, effective April 1, 2013, to specify that filing must be
174 accomplished electronically through the Odyssey® system unless a statute, rule or order
175 provides otherwise.

176 Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to require that proof
177 of service be provided and filed by a party seeking to file an initiating pleading. Under Rule
178 3, an action is commenced on service of the initiating pleading, not on filing. Unless a rule
179 specifically provides otherwise, service under Rule 4 must be accomplished before any
180 pleadings in an action may be filed.

181 Subparagraph (d)(2)(A) was amended, effective March 1, 2013, to include language
182 allowing the defendant to demand filing of the complaint or to file the complaint itself. This
183 language was transferred from Rule 4.

184 Subparagraph (d)(2)(A) was amended, effective April 1, 2013, to clarify that any party
185 who files a complaint or other initiating pleading must serve notice on the other parties in the
186 matter. Service of the summons must be made under Rule 4.

187 Subdivision (f) was amended, effective March 1, 2003, to permit proof of service to
188 be made by court personnel as well as by an attorney. Proof of service may also be made in
189 the same manner as provided by Rule 4(i).

190 Rule 5 was amended, effective March 1, 2011, in response to the December 1, 2007,
191 revision of the Federal Rules of Civil Procedure. The language and organization of the rule
192 were changed to make the rule more easily understood and to make style and terminology
193 consistent throughout the rules.

194 Rule 5 was amended, effective April 1, 2013, to replace the term “paper” with
195 “document” throughout the rule.

196 Sources: Joint Procedure Committee Minutes of April 25-26, 2013, pages 15-16;
197 January 31-February 1, 2013, pages 2-5, 15-18; January 26-27, 2012, pages 13-16;
198 September 24-25, 2009, pages 12-13; April 24-25, 2008, pages 18-21; January 24, 2008,
199 pages 2-7; October 11-12, 2007, pages 20-27; April 26-27, 2007, pages 19-22; September
200 27-28, 2001, pages 11-12; April 30-May 1, 1998, page 3; January 29-30, 1998, page 18;
201 September 26-27, 1996, pages 16-17, 20; September 23-24, 1993, pages 19-20; April 29-30,
202 1993, pages 20-21; November 7-8, 1991, page 3; October 25-26, 1990, pages 10-12; April
203 20, 1989, page 2; December 3, 1987, page 11; May 21-22, 1987, pages 17-18; February 19-
204 20, 1987, page 4; September 18-19, 1986, page 8; November 30, 1984, pages 26-27; October
205 18, 1984, pages 8-11; November 29-30, 1979, page 2; September 20-21, 1979, pages 4-5;
206 Fed.R.Civ.P. 5.

207 Cross Reference: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction -- Process --
208 Service), N.D.R.Civ.P. 45 (Subpoena), and N.D.R.Civ.P. 77 (District Courts and Clerks);
209 N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.Ct. 3.1 (Pleadings); N.D.R.Ct. 3.5
210 (Electronic Filing in the District Courts); N.D.R.Ct. 6.4 (Exhibits), N.D.R.Ct. 7.1

211 (Judgments, Orders and Decrees): N.D.R.Ct. 11.2 (Withdrawal of Attorneys).

RULE 6. COMPUTING AND EXTENDING TIME; TIME FOR MOTION PAPERS

(a) Computing time. The following rules apply in computing any time period specified in these rules, or in any local rule, court order, or statute that does not specify a method of computing time.

(1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays;

and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period stated in hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

22 (3) Inaccessibility of the clerk's office. Unless the court orders otherwise, if the
23 clerk's office is inaccessible:

24 (A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended
25 to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

26 (B) during the last hour for filing under Rule 6(a)(2), then the time for filing is
27 extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal
28 holiday.

29 (4) "Last Day" defined. Unless a different time is set by a statute, local rule, or court
30 order, the last day ends:

31 (A) for electronic filing, at midnight in the court's time zone; and

32 (B) for filing by other means, when the clerk's office is scheduled to close.

33 (5) "Next Day" defined. The "next day" is determined by continuing to count forward
34 when the period is measured after an event and backward when measured before an event.

35 (b) Extending time.

36 (1) In general. When an act may or must be done within a specified time, the court
37 may, for good cause, extend the time:

38 (A) with or without motion or notice if the court acts, or if a request is made, before
39 the original time or its extension expires; or

40 (B) on motion made after the time has expired if the party failed to act because of
41 excusable neglect.

42 (2) Exceptions. A court cannot extend the time to act under Rules 4(e)(7), 50(b) and

43 ~~(d)~~, 52(b), 59~~(c)~~, (i) and (j), and 60(b).

44 (c) [Rescinded]

45 (d) Motions and notices of hearing.

46 (1) In general. A written motion and notice of the motion must be served at least 21
47 days before the motion may be heard, with the following exceptions:

48 (A) when the motion may be heard ex parte;

49 (B) when these rules set a different period; or

50 (C) when a court order - which a party may, for good cause, apply for ex parte - sets
51 a different period.

52 (e) Service made electronically, by mail or third-party commercial carrier.

53 (1) Whenever a party must or may act within a prescribed period after service and
54 service is made electronically, by mail or third-party commercial carrier under Rule 5, three
55 days are added after the prescribed period would otherwise expire under N.D.R.Civ.P. 6(a).

56 (2) If service is made by mail or third-party commercial carrier under Rule 4, the
57 prescribed period begins running upon delivery.

58 (3) For purposes of computation of time, any document electronically served must be
59 treated as if it were mailed on the date of transmission.

60 EXPLANATORY NOTE

61 Rule 6 was amended, effective 1971; March 1, 1990; on an emergency basis, March
62 1, 1992; January 1, 1995; March 1, 1997; March 1, 1999; March 1, 2001; March 1, 2004;
63 March 1, 2007; March 1, 2009; March 1, 2011;_____.

64 Legal holidays in North Dakota are listed in N.D.C.C. ch. 1-03.

65 Rule 6 was amended, effective March 1, 2011, in response to the December 1, 2007,
66 revision of the Federal Rules of Civil Procedure. The language and organization of the rule
67 were changed to make the rule more easily understood and to make style and terminology
68 consistent throughout the rules.

69 Subdivision (a) was amended, effective March 1, 2011, to simplify and clarify the
70 provisions that describe how deadlines are computed. Under the previous rule, intermediate
71 weekends and holidays were omitted when computing short periods but included when
72 computing longer periods. Under the amended rule, intermediate weekends and holidays are
73 counted regardless of the length of the specified period.

74 Paragraph (b)(2) was amended, effective March 1, 2011, to ~~eliminate the exception~~
75 ~~for extending~~ clarify that there can be no extension of the times set by provisions in Rules
76 4(e)(7), 52(b), 59(~~c~~), (i) and (j), and 60(b).

77 Subdivision (d) was amended, effective March 1, 1997, because Rule 3.2, N.D.R.Ct.,
78 governs when papers supporting or opposing a motion must be served. The March 1, 2001
79 amendment changes from 14 to 18 days when a motion must be served before it may be
80 heard.

81 Paragraph (d)(1) was amended, effective March 1, 2011, to change from 18 to 21 days
82 when a motion must be served before it may be heard.

83 Subdivision (e) was amended, effective March 1, 1999, to make the three-day
84 extension for service by mail applicable when service is via third-party commercial carrier.

85 The proof of service must contain the date of mailing or deposit with the third-party
86 commercial carrier.

87 Subdivision (e) was amended, effective March 1, 2004, to restrict applicability of the
88 three-day extension for service by mail or third-party commercial carrier to items served
89 under Rule 5. The time of service for an item served by mail or third-party commercial
90 carrier under Rule 4 is the time the item is delivered to or refused by the recipient.

91 Subdivision (e) was amended, effective March 1, 2007, to clarify how to count the
92 three-day extension for service by mail or third-party commercial carrier. Under the
93 amendment, a party that is required or permitted to act within a prescribed period should first
94 calculate that period, without reference to the 3-day extension, but with reference to the other
95 time computation provisions of these rules. After the party has identified the date on which
96 the prescribed period would expire but for the operation of subdivision (e), the party should
97 add 3 calendar days. The party must act by the third day of the extension, unless that day is
98 a Saturday, Sunday, or legal holiday, in which case the party must act by the next day that is
99 not a Saturday, Sunday, or legal holiday.

100 Subdivision (e) was amended, effective March 1, 2009, to provide that a document
101 served by electronic means is treated as if it were mailed on the date of transmission. Service
102 by electronic means includes facsimile transmission.

103 Sources: Joint Procedure Committee Minutes of _____; April 25-26,
104 2013, pages 26-27; April 29-30, 2010, pages 4-5; April 24-25, 2008; January 24, 2008, page
105 15; April 27-28, 2006, pages 6-7; January 26, 2006, page 11; January 30-31, 2003, pages 4-6;

106 September 26-27, 2002, pages 15-18; January 27-28, 2000, pages 16-17; September 23-24,
107 1999, pages 20-21; January 29-30, 1998, page 18; April 25, 1996, pages 8-11; April 28-29,
108 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 14-16
109 and 20; April 29-30, 1993, page 20; November 7-8, 1991, page 3; October 25-26, 1990, page
110 12; April 20, 1989, page 2; December 3, 1987, page 11; June 22, 1984, pages 30-31;
111 September 20-21, 1979, pages 5-6; Fed.R.Civ.P. 6.

112 Statutes Affected:

113 Considered: N.D.C.C. ch. 1-03.

114 Cross Reference: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction -- Process --
115 Service), N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P.
116 52 (Findings by the Court), N.D.R.Civ.P. 59 (New Trials -- Amendment of Judgments), and
117 N.D.R.Civ.P. 60 (Relief From Judgment or Order); N.D.R.Crim.P. 45 (Time); N.D.R.Ct. 3.2
118 (Motions).

RULE 13. JUDICIAL REFEREES

Section 1. Authority.

The 1985 Legislative Assembly provided for appointment of judicial referees under H.B. 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-30, the Supreme Court adopts the following administrative rule relating to judicial referees.

Section 2. Statement of Policy.

The North Dakota Judicial System's policy is to provide for the qualifications, the extent and assignment of authority, procedure and the conduct of the role of judicial referees within the North Dakota Judicial System in each judicial district.

Section 3. Qualifications of Judicial Referees.

Minimum qualifications for a judicial referee include:

(a) United States citizenship;

(b) physical residence in the judicial district of the appointment after appointment unless physical residence is waived by the presiding judge of the judicial district; and

(c) a license to practice law in the state of North Dakota; or a juvenile supervisor/referee meeting the requirements of N.D.C.C. § 27-20-06(1)(i).

Section 4. Appointment.

The presiding judge, on behalf of all of the district court judges of the judicial district, must execute in writing the appointment of all judicial referees, to serve at the pleasure of the district court judges of the judicial district. Judicial referees must be compensated under

22 the personnel system of the North Dakota Judicial System.

23 Section 5. Scope of Delegable Duties.

24 (a) A presiding judge, after consultation with the district court judges of the judicial
25 district, may authorize a judicial referee to preside in any individual proceeding or class of
26 proceedings under:

27 (1) N.D.C.C. ch. 12.1-31.2;

28 (2) N.D.C.C. title 14, except contested divorce trials;

29 (3) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29;

30 (4) N.D.C.C. ch. 27-08.1;

31 ~~(4)~~ (5) N.D.C.C. ch. 27-20;

32 ~~(5)~~ (6) N.D.C.C. ch. 28-25; and

33 ~~(6)~~ (7) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2).

34 (b) A presiding judge, after consultation with the district court judges of the judicial
35 district, may authorize a judicial referee, while serving and acting as a magistrate appointed
36 under N.D. Sup. Ct. Admin. R. 20, to preside in any individual proceeding or class of
37 proceedings under N.D.C.C. § 39-06.1-03.

38 ~~(b)~~ (c) A judicial referee has such other authority of a district court judge as is
39 necessary to carry out the delegated duties, including the issuance of orders to show cause,
40 temporary restraining orders, temporary injunctions, and the power to impose remedial
41 sanctions for contempt of court.

42 ~~(c)~~ (d) The order issued under Subsection (a) of this section must be reduced to

43 writing and signed by the presiding judge of the judicial district. The order must be filed with
44 the clerk of district court of each county of the judicial district. The presiding judge must
45 send a copy of this document to the State Court Administrator. A copy must be made
46 available to any party upon request.

47 (d) (e) Within the limits set forth in the written order of the presiding judge, district
48 court judges may refer individual cases or classes of cases to a judicial referee by written
49 order.

50 (e) (f) After July 1, 1987, a judicial referee who hears matters under N.D.C.C. ch. 27-
51 20 may not exercise supervision of personnel who supervise juveniles.

52 Section 6. Geographical Jurisdiction.

53 Each judicial referee will have jurisdiction only within the judicial district of
54 appointment and is expected to maintain an office as assigned by the presiding judge of the
55 judicial district. A judicial referee may be appointed to temporary duty in another judicial
56 district by the presiding judge of the judicial district, with the consent of the presiding judge
57 of the receiving judicial district or by the Chief Justice under N.D. Const. art. VI, § 3.

58 Section 7. Proceedings on the Record.

59 Proceedings Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in
60 traffic cases under N.D.C.C. § 39-06.1-03, proceedings must be heard on the record.

61 Section 8. Removal from Referee.

62 Any party to a proceeding before a judicial referee is entitled to have the matter heard
63 by a district court judge, if written request is filed by the party within seven days after service

64 of either the initiating documents or other notice informing the party of this right.

65 Section 9. Standard of Conduct.

66 The Rules of Judicial Conduct must be observed by each judicial referee.

67 Section 10. Findings and Order.

68 (a) The findings and order of the judicial referee have the effect of the findings and
69 order of the district court until superseded by a written order of a district court judge.

70 (b) Copies of the findings and order together with written notice of the right of review
71 must be promptly served on the parties under N.D.R.Civ.P. 5.

72 Section 11. Procedure for Review.

73 (a) Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases
74 under N.D.C.C. § 39-06.1-03, A a review of the findings and order of a judicial referee may
75 be ordered at any time by a district court judge and must be ordered if a party files a written
76 request for review within seven days after service of the notice in Section 10(b). The request
77 for review must state the reasons for the review. A party requesting review must give notice
78 to all other parties. A party seeking to respond to a request for review must file a response
79 within 14 days after service of notice of the request.

80 (b) The review by a district court judge must be a de novo review of the record. The
81 district court may:

82 (1) adopt the referee's findings;

83 (2) remand to the referee for additional findings; or

84 (3) reject the referee's findings.

85 (c) If the district court judge rejects the referee's findings, the court shall issue its own
86 findings of fact, with or without a hearing.

87 EXPLANATORY NOTE

88 Section 5 was amended, effective September 1, 2013, to reflect enactment of 2013
89 House Bill No. 1075 [2013 N.D. Sess. Laws ch. 241, § 1], which added three categories of
90 cases to the statutory list of proceedings that may be delegated to a judicial referee by a
91 presiding judge: disorderly conduct restraining order cases, noncriminal game and fish
92 violations, and review of administrative license suspensions for nonpayment of child support.

93 Section 5 was amended, effective March 1, 2012, to allow a presiding judge to
94 authorize a judicial referee to preside in proceedings involving disorderly conduct restraining
95 orders.

96 Section 5 was amended, effective _____, to allow a presiding judge to
97 authorize a judicial referee to preside in small claims and traffic court proceedings.

98 Section 7 was amended, effective _____, to clarify that small claims
99 and traffic court matters decided by a judicial referee are not heard on the record.

100 Section 8 was amended, effective March 1, 2011, to increase the time to request a
101 district court judge from five to seven days after service of initiating documents.

102 Section 11(a) was amended, effective March 1, 2011, to increase the time to request
103 a review from a district court judge from five to seven days after service of the right to
104 review. The time to respond to a request for review was increased from 10 to 14 days after
105 service of notice of the request.

106 Section 11(a) was amended, effective _____, to clarify that small claims
107 and traffic court matters decided by a judicial referee are not reviewable or appealable.

108 Source: Joint Procedure Committee Meeting Minutes of January 31-February 1, 2013,
109 page 29; September 23-24, 2010, pages 14-15, 21; April 29-30, 2010, page 21; April 24-25,
110 2003, page 3; January 30-31, 2003, pages 21-23; April 25-26, 2002, pages 16-17; May 6-7,
111 1999, pages 14-15; April 29-30, 1993, page 2. Court Services Administration Committee
112 Meeting Minutes of May 17, 1985, pages 2-4. Family Caselaw Referee Study Subcommittee
113 of Court Services Administration Committee Meeting Minutes of April 19, 1985, pages 3-8;
114 March 15, 1985, pages 1-6; February 22, 1985, pages 1-9; January 11, 1985, pages 2-8; and
115 December 17, 1984, page 5. N.D. Const. art. VI, § 3; and N.D.C.C. § 27-05-30.

116 [Adopted as emergency rule effective June 13, 1985; readopted September 17, 1985;
117 amended effective March 1, 1994; January 1, 1995; March 1, 2000; March 1, 2003; March
118 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012; September 1,
119 2013; _____.]