

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20140271

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**Proposed Amendments to the North Dakota Rules of Civil Procedure,  
North Dakota Rules of Criminal Procedure, North Dakota Rules of Court, and  
North Dakota Supreme Court Administrative Rules**

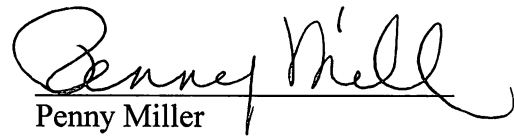
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[1] The Joint Procedure Committee submitted a petition to approve proposed amendments to North Dakota Rules of Civil Procedure 3 and 26; North Dakota Rules of Criminal Procedure 43; North Dakota Rules of Court 10.1 and 11.2; and North Dakota Supreme Court Administrative Rules 13, 41, and 52. The Committee forwarded additional amendments to North Dakota Rules of Court 11.2. A synopsis and the proposed Amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. A comment period was provided and a hearing was held October 30, 2014. The Court considered the matter, and

[2] **ORDERED**, that proposed amendments to North Dakota Rules of Civil Procedure 3 and 26; North Dakota Rules of Criminal Procedure 43; North Dakota Rules of Court 10.1 and 11.2; and North Dakota Supreme Court Administrative Rules 13, 41, and 52, as further amended by the Court, are ADOPTED, effective March 1, 2015.

[3] The Supreme Court of the State of North Dakota convened the 23<sup>rd</sup> day of December, 2014, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices, directed the Clerk of the Supreme Court to enter the above order.



  
Penny Miller  
Clerk  
North Dakota Supreme Court

RULE 3. COMMENCING AN ACTION

1 A civil action is commenced by the service of a summons.

2 EXPLANATORY NOTE

3 Rule 3 was amended, effective March 1, 2011. The explanatory note was  
4 amended, effective March 1, 2015.

5 All that is required to commence a civil action is the service of a summons  
6 on a defendant. This is unlike Fed.R.Civ.P. 3 which requires the filing of a  
7 complaint with the court to commence an action. Rule 4(c) sets out the contents of  
8 the summons and explains service of the complaint.

9 An action is not commenced for the purpose of tolling a statute of limitation  
10 except as provided in N.D.C.C. § 28-01-38.

11 Rule 3's title was amended, effective March 1, 2011.

12 Sources: Joint Procedure Committee Minutes of September 26, 2013, page  
13 29; January 24, 2008, pages 14-15; September 20-21, 1979, page 4.

14 Statutes Affected:

15 Considered: N.D.C.C. § 28-01-38.

16 Cross Reference: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction--Process--  
17 Service).

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

1           (a) Discovery methods. Parties may obtain discovery by one or more of the  
2 following methods:

3           (1) depositions on oral examination or written questions;

4           (2) written interrogatories;

5           (3) production of documents or things or permission to enter on land or  
6 other property, for inspection and other purposes;

7           (4) physical and mental examinations; and

8           (5) requests for admission.

9           (b) Discovery scope and limits.

10          (1) In general.

11          (A) Scope. Unless otherwise limited by court order, the scope of discovery  
12 is as follows: Parties may obtain discovery regarding any nonprivileged matter that  
13 is relevant to any party's claim or defense, including the existence, description,  
14 nature, custody, condition, and location of any documents, electronically stored  
15 information, or other tangible things and the identity and location of persons who  
16 know of any discoverable matter. For good cause, the court may order the  
17 discovery of any matter relevant to the subject matter involved in the action.

18 Relevant information need not be admissible at the trial if the discovery appears  
19 reasonably calculated to lead to the discovery of admissible evidence. For the

20 purposes of the discovery rules, the phrase "electronically stored information"  
21 includes reasonably accessible metadata that will enable the discovering party to  
22 have the ability to access such information as the date sent, date received, author,  
23 and recipients. The phrase does not include other metadata unless the parties agree  
24 otherwise or the court orders otherwise upon motion of a party and a showing of  
25 good cause for the production of certain metadata. All discovery is subject to the  
26 limitations imposed by Rule 26(b)(1)(B)(i).

27 (B) Limitations on frequency and extent.

28 (i) When required. On motion or on its own, the court must limit the  
29 frequency or extent of discovery otherwise allowed by these rules if it determines  
30 that:

31 -discovery sought is unreasonably cumulative or duplicative, or it can be  
32 obtained from some other source that is more convenient, less burdensome, or less  
33 expensive;

34 - the party seeking discovery has had ample opportunity to obtain the  
35 information by discovery in the action; or

36 - the burden or expense of the proposed discovery outweighs its likely  
37 benefit, considering the needs of the case, the amount in controversy, the parties'  
38 resources, the importance of the issues at stake in the action, and the importance of  
39 the discovery in resolving the issues.

40 (ii) Specific limitations on electronically stored information. A party need

41 not provide discovery of electronically stored information from sources that the  
42 party identifies as not reasonably accessible because of undue burden or cost. On  
43 motion to compel discovery or for a protective order, the party from whom  
44 discovery is sought must show that the information is not reasonably accessible  
45 because of undue burden or cost. If that showing is made, the court may  
46 nonetheless order discovery from such sources if the requesting party shows good  
47 cause, considering the limitations of Rule 26(b)(1)(B). The court may specify  
48 conditions for the discovery.

49 (2) Insurance agreements. If a person carrying on an insurance business  
50 might be liable to satisfy part or all of a judgment in an action or to indemnify or  
51 reimburse for payments made to satisfy the judgment, a party may obtain discovery  
52 of the existence and contents of the insurance agreement. Disclosure of the  
53 insurance agreement is not reason for its admission in evidence at trial. An  
54 application for insurance may not be treated as part of an insurance agreement.

55 (3) Trial preparation - Materials.

56 (A) Documents and tangible objects. Ordinarily, a party may not discover  
57 documents and tangible things that are prepared in anticipation of litigation or for  
58 trial by or for another party or its representative (including the other party's  
59 attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule  
60 26(b)(5), these materials may be discovered if:

61 (i) they are otherwise discoverable under Rule 26(b)(1); and

62 (ii) the party shows that it has substantial need of the materials to prepare its case  
63 and cannot, without undue hardship, obtain their substantial equivalent by other  
64 means.

65 (B) Protection against disclosure. If the court orders discovery of those  
66 materials, it must protect against disclosure of the mental impressions, conclusions,  
67 opinions, or legal theories of a party's attorney or other representative concerning  
68 the litigation.

69 (C) Previous statement. Any party or other person may, on request and  
70 without the required showing, obtain the person's own previous statement about  
71 the action or its subject matter. If the request is refused, the person may move for a  
72 court order and Rule 37(a)(5) applies to the award of expenses. A previous  
73 statement is:

74 (i) a written statement that the person has signed or otherwise adopted or  
75 approved; or

76 (ii) a contemporaneous stenographic, mechanical, electrical, or other  
77 recording, or a transcription of it, that recites substantially verbatim the person's  
78 oral statement.

79 (4) Trial preparation - Experts.

80 (A) Expert who may testify. Discovery of facts known and opinions held by  
81 experts, otherwise discoverable under Rule 26(b)(1) and acquired or developed in  
82 anticipation of litigation or for trial, may be obtained only as follows:

83 (i) a party may through interrogatories require any other party to identify each  
84 person whom the other party expects to call as an expert witness at trial; to state:

85 - the subject matter on which the expert is expected to testify;

86 - and to state the substance of the facts and opinions to which the expert is  
87 expected to testify;

88 - and a summary of the grounds for each opinion;

89 (ii) a party may depose any person who has been identified as an expert  
90 witness whose opinions may be presented at trial unless the court finds, on motion,  
91 that the deposition is unnecessary, overly burdensome, or unfairly oppressive.

92 (B) Expert employed only for trial preparation. Ordinarily, a party may not,  
93 by interrogatories or deposition, discover facts known or opinions held by an  
94 expert who has been retained or specially employed by another party in  
95 anticipation of litigation or to prepare for trial and who is not expected to be called  
96 as a witness at trial. But a party may do so only:

97 (i) as provided in Rule 35(b); or

98 (ii) on showing exceptional circumstances under which it is impracticable  
99 for the party to obtain facts or opinions on the same subject by other means.

100 (C) Payment. Unless manifest injustice would result, the court must require  
101 that the party seeking discovery:

102 (i) pay the expert a reasonable fee for time spent in responding to discovery  
103 under Rule 26(b)(4)(A) or (B); and

104 (ii) for discovery under Rule 26(b)(4)(A) the court may require, and for discovery  
105 under Rule 26(b)(4)(B) the court must require the party seeking discovery to pay  
106 the other party a fair portion of the fees and expenses it reasonably incurred in  
107 obtaining the expert's facts and opinions.

108 (5) Claiming privilege or protecting trial preparation materials.

109 (A) Information withheld. When a party withholds information otherwise  
110 discoverable by claiming that the information is privileged or subject to protection  
111 as trial-preparation material, the party must:

112 (i) expressly make the claim; and

113 (ii) describe the nature of the documents, communications, or tangible  
114 things not produced or disclosed, and do so in a matter that, without revealing  
115 information itself privileged or protected, will enable other parties to assess the  
116 claim.

117 (B) Information produced. If information is produced in discovery that is  
118 subject to a claim of privilege or of protection as trial-preparation material, the  
119 party making the claim may notify any party that received the information of the  
120 claim and the basis for it. After being notified, a receiving party must promptly  
121 return, sequester, or destroy the specified information and any copies it has and  
122 may not use or disclose the information until the claim is resolved. A receiving  
123 party may promptly present the information to the court under seal for  
124 determination of the claim. If the receiving party disclosed the information before



125 being notified, it must take reasonable steps to retrieve it. The producing party  
126 must preserve the information until the claim is resolved.

127 (c) Protective orders.

128 (1) In general. A party or any person from whom discovery is sought may  
129 move for a protective order in the court where the action is pending, or as an  
130 alternative on matters relating to a deposition, in the court in the district where the  
131 deposition will be taken. The court may, for good cause shown, issue an order to  
132 protect a party or person from annoyance, embarrassment, oppression, or undue  
133 burden or expense, including one or more of the following:

134 (A) forbidding the discovery;

135 (B) specifying terms and conditions, including time or place, for the  
136 discovery;

137 (C) prescribing a discovery other than the one selected by the party seeking  
138 discovery;

139 (D) forbidding inquiry into certain matters, or limiting the scope of  
140 discovery to certain matters;

141 (E) designating the persons who may be present while the discovery is  
142 conducted;

143 (F) requiring that a deposition be sealed and opened only on court order;

144 (G) requiring that a trade secret or other confidential research, development,  
145 or commercial information not be revealed or be revealed only in a specified way;

146 and

147 (H) requiring that the parties simultaneously file specified sealed documents  
148 or information ~~enclosed in sealed envelopes~~ to be opened as the court directs.

149 (2) Ordering discovery. If a motion for a protective order is wholly or  
150 partially denied, the court may, on just terms, order that any party or person  
151 provide or permit discovery.

152 (3) Awarding expenses. Rule 37(a)(5) applies to the award of expenses.

153 (d) Sequence and timing of discovery. Unless, on motion, the court orders  
154 otherwise for the parties' and witnesses' convenience and in the interests of justice,  
155 methods of discovery may be used in any sequence and discovery by one party  
156 does not require any other party to delay its discovery.

157 (e) Supplementing responses.

158 (1) In general. A party who has responded to an interrogatory, request for  
159 production, or request for admission, must supplement or correct its response:

160 (A) in a timely manner if the party learns that in some material respect the  
161 response is incomplete or incorrect, and if the additional or corrective information  
162 has not otherwise been made known to the parties during the discovery process or  
163 in writing; or

164 (B) as ordered by the court.

165 (2) Witnesses. A party has a duty to timely supplement a response about:

166 (A) the identity and location of persons having knowledge of discoverable

167 matters, and

168 (B) the identity of each person expected to be called as an expert witness at  
169 trial, the subject matter on which the person is expected to testify, and the  
170 substance of the person's testimony.

171 (f) Discovery Meeting, Discovery Conference, Discovery Plan.

172 (1) Discovery Meeting. No earlier than 40 days after the complaint is filed  
173 in an action, any party's attorney or a self-represented party may request in writing  
174 a meeting on the subject of discovery, including the discovery of electronically  
175 stored information. If such a request is made, the parties must meet within 21 days,  
176 unless agreed otherwise by the parties or their attorneys or another time for the  
177 meeting is ordered by the court. Even if the parties or their attorneys do not seek to  
178 have a discovery meeting, at any time after the complaint is filed the court may  
179 direct the parties or their attorneys to appear before it for a discovery conference.

180 (2) Matters for Consideration. During a discovery meeting held under Rule  
181 26(f)(1), the attorneys and any self-represented parties must:

182 (A) consider the nature and basis of the parties' claims and defenses and the  
183 possibilities for promptly settling or resolving the case, and

184 (B) discuss the preparation of a discovery plan as set forth in Rule 26(f)(3).

185 (3) Conduct of Meeting. Attorneys for the parties, and any self-represented  
186 parties, that have appeared in the case are jointly responsible for arranging the  
187 meeting, for being prepared to discuss a discovery plan, and for attempting in good

188 faith to agree on a discovery plan. The meeting may be held by telephone, by  
189 videoconference, or in person, or by a combination of methods, unless the court,  
190 on motion, orders the attorneys and the self-represented parties to attend in person.

191 (4) Discovery Plan or Report.

192 (A) In General. If a discovery plan is agreed on, it must be submitted to the  
193 court within 14 days after the meeting, and the parties may request a conference  
194 with the court regarding the plan. If the parties do not agree on a discovery plan,  
195 they must submit to the court within 14 days after the meeting a joint report  
196 containing those parts of a discovery plan on which they agree and the position of  
197 each of the parties on the parts upon which they disagree. Unless the parties agree  
198 otherwise, the attorney for the first plaintiff listed on the complaint is responsible  
199 for submitting the discovery plan or joint report.

200 (B) Discovery Plan Contents. A discovery plan must contain the following:

201 (i) a statement of the issues as they then appear;

202 (ii) a proposed plan and schedule of discovery, including the discovery of  
203 electronically stored information;

204 (iii) with respect to electronically stored information, and if appropriate  
205 under the circumstances of the case, a reference to the preservation of such  
206 information, the media form, format, or procedures by which such information will  
207 be produced, the allocation of the costs of preservation, production, and, if  
208 necessary, restoration, of such information, the method for asserting or preserving

209 claims of privilege or of protection of the information as trial-preparation materials  
210 if different from that provided in Rule 26 (b)(5), the method for asserting or  
211 preserving confidentiality and proprietary status, and any other matters addressed  
212 by the parties;

213 (iv) any limitations proposed to be placed on discovery, including, if  
214 appropriate under the circumstances of the case, that discovery be conducted in  
215 phases or be limited to or focused on particular issues;

216 (v) when discovery should be completed; and

217 (vi) if appropriate under the circumstances of the case, any limitations or  
218 conditions under Rule 26 (c) regarding protective orders.

219 (5) Discovery Conference. If the parties are unable to agree to a discovery  
220 plan at a meeting held under Rule 26(f)(1), they must, on motion of any party,  
221 appear before the court for a discovery conference at which the court must order  
222 the entry of a discovery plan after consideration of the report required to be  
223 submitted under Rule 26(f)(4)(A) and the position of the parties. The order may  
224 address other matters, including the allocation of discovery costs, as are necessary  
225 for the proper management of discovery in the action. An order may be altered or  
226 amended as justice may require. The court may combine the discovery conference  
227 with a pretrial conference authorized by Rule 16.

228 (g) Signing discovery requests, responses, and objections.

229 (1) Signature required; Effect of signature. Every discovery request,

230 response, or objection must be signed by at least one attorney of record in the  
231 attorney's individual name, or by the party personally, if self-represented, state the  
232 signer's address, electronic mail address for electronic service, telephone number,  
233 and State Board of Law Examiners identification number, if applicable. By  
234 signing, the attorney or party certifies that the signer has read the request,  
235 response, or objection, and that to the best of the signer's knowledge, information,  
236 and belief formed after a reasonable inquiry it is:

237 (A) consistent with these rules and warranted by existing law or by a good  
238 faith argument for extending, modifying or reversing existing law;

239 (B) not interposed for any improper purpose, such as to harass, cause  
240 unnecessary delay or needlessly increase the cost of litigation; and

241 (C) neither unreasonable nor unduly burdensome or expensive, considering  
242 the needs of the case, prior discovery in the case, the amount in controversy, and  
243 the importance of the issues at stake in the litigation.

244 (2) Failure to sign. Other parties have no duty to act on an unsigned request,  
245 response, or objection until it is signed, and the court, on motion or on its own,  
246 must strike it unless a signature is promptly supplied after the omission is called to  
247 the attorney's or party's attention.

248 (3) Sanction for improper certification. If a certification violates this rule,  
249 without substantial justification, the court, on motion or its own, must impose an  
250 appropriate sanction on the signer, the party on whose behalf the signer was acting,

251 or both. The sanction may include an order to pay the reasonable expenses,  
252 including attorney's fees, caused by the violation.

253 EXPLANATORY NOTE

254 Rule 26 was amended, effective July 1, 1981; March 1, 1986; March 1,  
255 1990; March 1, 1996; March 1, 2008; March 1, 2011; March 1, 2013; March 1,  
256 2015.

257 Rule 26 is derived from Fed.R.Civ.P. 26.

258 As amended, effective March 1, 1996, a party deposing another party's  
259 expert witness under subdivision (b)(4)(A)(ii) must pay the expert a reasonable fee  
260 under subdivision (b)(4)(C), even though a court order has not been obtained  
261 authorizing the deposition or commanding payment of expert witness fees.

262 Rule 26 was amended, effective March 1, 2008, to implement changes  
263 related to discovery of electronically stored information. The changes reflect the  
264 2006 amendments to Fed.R.Civ.P. 26. Subdivision (b) was amended to incorporate  
265 a new subparagraph (b)(2)(B) on limitations to discovery of electronic information.  
266 A new paragraph (b)(6) was also added to address claims of privilege or protection  
267 of trial preparation materials.

268 Rule 26 was amended, effective March 1, 2011, in response to the  
269 December 1, 2007, revision of the Federal Rules of Civil Procedure. The language  
270 and organization of the rule were changed to make the rule more easily understood  
271 and to make style and terminology consistent throughout the rules.

272 Subparagraph (b)(1)(A) was amended, effective March 1, 2013, to include a  
273 definition of "electronically stored information" and to designate what types of  
274 metadata may be discovered.

275 Subparagraph (c)(1)(H) was amended, effective March 1, 2015, to remove a  
276 reference to filing documents in a sealed paper envelope. Items are filed with the  
277 court electronically, and may be designated as sealed when submitted.

278 Subdivision (f) was amended, effective March 1, 2013, to provide a  
279 procedure for discovery meetings and conferences and for the formulation of  
280 discovery plans and reports, with an emphasis on discussing and planning for the  
281 discovery of electronic information.

282 Paragraph (g)(1) was amended, effective March 1, 2015, to specify that the  
283 attorney's electronic mail address for electronic service must be included with the  
284 signature.

285 Sources: Joint Procedure Committee Minutes of April 24-25, 2014, page  
286 25; January 26-27, 2012, page 17-19; January 29-30, 2009, page 6; September 25,  
287 2008, pages 21-22; January 25, 2007, pages 9-10; September 28-29, 2006, pages  
288 18-20; January 26-27, 1995, pages 10-12; September 29-30, 1994, pages 21-22;  
289 April 20, 1989, page 2; December 3, 1987, page 11; April 26, 1984, page 28;  
290 January 20, 1984, pages 23-31; December 11-12, 1980, page 2; October 30-31,  
291 1980, pages 9-10; September 20-21, 1979, page 19; Fed.R.Civ.P. 26.

292 Cross Reference: N.D.R.Civ.P. 16 (Pretrial Procedure -- Formulating



293 Issues), N.D.R.Civ.P. 28 (Persons Before Whom Depositions May Be Taken),  
294 N.D.R.Civ.P. 29 (Stipulations Regarding Discovery Procedure), N.D.R.Civ.P. 30  
295 (Depositions Upon Oral Examination), N.D.R.Civ.P. 30.1 (Uniform Audio-Visual  
296 Deposition Rule), N.D.R.Civ.P. 31 (Depositions of Witnesses Upon Written  
297 Questions), 33 (Interrogatories to Parties), N.D.R.Civ.P. 34 (Production of  
298 Documents and Things and Entry Upon Land for Inspection and Other Purposes),  
299 N.D.R.Civ.P. 35 (Physical and Mental Examination of Persons), 36 (Requests for  
300 Admission), N.D.R.Civ.P. 37 (Failure to Make Discovery -- Sanctions), N.D.R.Ev.  
301 507 (Trade Secrets), N.D.R.Ev. 510 (Waiver of Privilege by Voluntary  
302 Disclosure), and N.D.R.Ev. 706 (Court-Appointed Experts).

RULE 43. DEFENDANT'S PRESENCE

1 (a) When required.

2 (1) In General. Unless this rule provides otherwise, the defendant must be  
3 present at:

4 (A) the initial appearance, the arraignment, and the plea;

5 (B) every trial stage, including jury impanelment and the return of the  
6 verdict; and

7 (C) sentencing.

8 (2) ~~Interactive Television~~ Reliable Electronic Means. Presence permitted by  
9 interactive television, contemporaneous audio or audiovisual transmission by  
10 reliable electronic means is presence for the purposes of this rule.

11 (3) Jury Question.

12 (A) In General. If, after beginning deliberations, the members of the jury  
13 request information on a point of law or request to have testimony read or played  
14 back to them, they must be brought into the courtroom. The court's response must  
15 be provided in the presence of counsel and the defendant.

16 (B) Agreed Manner of Response. In the alternative, after consultation with  
17 counsel in the presence of the defendant, the court may respond to a jury's question  
18 or request for testimony in a manner other than in open court if agreed to by  
19 counsel and the defendant.

20 (b) When not required. ~~A~~ If the court permits, a defendant need not be  
21 present under any of the following circumstances:

22           (1) Felony Offense. The offense is punishable by imprisonment for more  
23           than one year, and with a represented defendant's written consent, entry of a not  
24           guilty plea and the preliminary hearing may occur in the defendant's absence.

25           ~~(1)~~ (2) Misdemeanor Offense or Infraction. The offense is punishable by  
26           fine or by imprisonment for not more than one year, or both, and with the  
27           defendant's written consent, the ~~court permits~~ arraignment, plea, trial, ~~and~~ or  
28           sentencing ~~to~~ may occur in the defendant's absence.

29           ~~(2)~~ (3) Conference or hearing on legal question. The proceeding involves  
30           only a conference or hearing on a question of law.

31           ~~(3)~~ (4) Sentence correction. The proceeding involves the correction or  
32           reduction of sentence under Rule 35.

33           (c) Waiving continued presence. The further progress of the trial, including  
34           the return of the verdict and the imposition of sentence, may not be prevented and  
35           the defendant waives the right to be present if the defendant, initially present at  
36           trial or having pleaded guilty:

37           (1) is voluntarily absent after the trial has begun (whether or not the  
38           defendant has been informed by the court of the obligation to remain during the  
39           trial);

40           (2) is voluntarily absent at the imposition of sentence; or

41           (3) after being warned by the court that disruptive conduct will cause the  
42           removal of the defendant from the courtroom, persists in conduct that justifies the  
43           defendant's exclusion from the courtroom.

44           EXPLANATORY NOTE

45 Rule 43 was amended, effective January 1, 1980; March 1, 1990; March 1,  
46 1998; March 1, 2004; March 1, 2006; March 1, 2008; March 1, 2010; March 1,  
47 2015.

48 Although Rule 43 does not require the defendant's presence in all instances,  
49 the rule does not give a defendant the right to be absent. The court has discretion  
50 whether to require the presence of the defendant.

51 In a non-felony case, if the defendant pleads guilty without appearing in  
52 court, a written form must be used advising the defendant of his or her  
53 constitutional rights and treating a record showing that the plea was made  
54 voluntarily, knowingly, and understandingly.

55 Rule 37 provides for summary affirmance if the defendant does not appear  
56 at a trial anew.

57 Rule 43 was amended, effective March 1, 2006, in response to the  
58 December 1, 2002, revision of the Federal Rules of Criminal Procedure. The  
59 language and organization of the rule were changed to make the rule more easily  
60 understood and to make style and terminology consistent throughout the rules.

61 Subdivision (a) was amended, effective March 1, 2004, in response to  
62 amendments to Rule 5 and Rule 10 allowing interactive television to be used for  
63 the initial appearance and arraignment. N.D. Sup. Ct. Admin. R. 52, which took  
64 effect June 1, 2005, governs proceedings conducted by interactive television.

65 Subdivision (a) was amended, effective March 1, 2010, to explain  
66 requirements for the consideration of questions submitted by the jury after  
67 deliberations begin.

68           Subdivision (a) was amended, effective March 1, 2015, to allow a  
69           defendant to be present by contemporaneous audio or audiovisual transmission  
70           using reliable electronic means. Any appearance by a defendant by electronic  
71           means must be consistent with the standards set by N.D. Sup. Ct. Admin. R. 52,  
72           which governs the use of contemporaneous transmission by reliable electronic  
73           means in court proceedings.

74           Subdivision (b) was amended, effective March 1, 2015, to allow a  
75           represented defendant in a felony case to waive presence at the preliminary hearing  
76           by submitting a not guilty plea in writing.

77           Sources: Joint Procedure Committee Minutes of April 24-25, 2014, pages  
78           12-15; May 21-22, 2009, pages 10-11; January 29-30, 2009, pages 13-17;  
79           September 28-29, 2006, pages 8-10; January 27-28, 2005, pages 34-36; September  
80           26-27, 2002, pages 13-14; January 30, 1997, pages 7-8; September 26-27, 1996,  
81           pages 8-10; January 26-27, 1995, pages 5-6; September 29-30, 1994, pages 2-4;  
82           April 28-29, 1994, pages 10-12; April 20, 1989, page 4; December 3, 1987, page  
83           15; December 7-8, 1978, pages 27-28; October 12-13, 1978, pages 43-44;  
84           December 11-15, 1972, pages 41-43; May 15-16, 1969, pages 11-13.

85           Statutes Affected:

86           Superseded: N.D.C.C. §§ 29-12-12, 29-13-02, 29-14-21, 29-16-03, 29-16-  
87           04, 29-16-06, 29-22-05, 29-22-11, 29-26-04, 33-12-23.

88           Considered: N.D.C.C. §§ 29-16-05, 29-26-11.

89           Cross Reference: N.D.R.Crim.P. 5 (Initial Appearance Before the  
90           Magistrate); N.D.R.Crim.P. 10 (Arrest); N.D.R.Crim.P. 11 (Pleas);

91 N.D.R.Crim.P. 35 (Correcting or Reducing a Sentence); N.D.R.Crim.P. 37  
92 (Appeal as of Right to District Court; How Taken); N.D.R.Crim.P. Appendix Form  
93 17 (Misdemeanor Petition to Enter Plea of Guilty); N.D. Sup. Ct. Admin. R. 52  
94 (~~Interactive Television~~ Contemporaneous Transmission by Reliable Electronic  
95 Means).

RULE 10.1. CONDUCT IN COURT

1 (a) Opening court. When the court is about to convene, appropriate court  
2 personnel ~~shall~~ will, by a rap of the gavel, command attention and announce the  
3 approach of the judge. Everyone in the courtroom ~~shall~~ must promptly and quietly  
4 rise and remain standing until appropriate court personnel, by proclamation,  
5 convenes the court and the judge is seated. Upon the close of the session, as  
6 announced by the judge, appropriate court personnel ~~shall~~ will by a rap of the  
7 gavel command attention. Everyone in the courtroom ~~shall~~ must promptly and  
8 quietly rise and remain standing until the judge has retired from the courtroom.

9 (b) Decorum.

10 (1) Anyone entering the courtroom while court is in session ~~shall~~ must  
11 immediately be seated. Everyone ~~shall~~ must behave in a quiet and orderly manner.  
12 No person may enter or leave the courtroom while the court is charging the jury,  
13 except in an emergency.

14 (2) Counsel ~~shall~~ must stand while addressing the court, except when  
15 stating an objection or otherwise directed by the court. All statements and  
16 communications by counsel to the court must be clearly and audibly made from the  
17 counsel table. While the court is in session, counsel may not approach the bench  
18 for conversation without permission of the court.

19 (3) To the extent practicable, the examination of a witness must be

20 conducted from the counsel table. Only one counsel for a party may examine any  
21 witness without permission of the court.

22 (4) Whenever practical and appropriate, a judge must be robed while  
23 presiding over the trial of a case.

24 (5) During a court appearance, counsel or a court official ~~shall~~ must refrain  
25 from wearing clothing suited primarily for sports or leisure time activities.

26 (c) Assignment of cases.

27 (1) Counsel ~~shall~~ must observe the assignment of cases, and keep advised of  
28 the progress of business of the court, so as to be ready when a case is reached.

29 (2) No arrangement as to time or order of trial will be recognized unless  
30 approved by the court.

31 (d) ~~Cameras, sound apparatus, and wireless communication devices~~  
32 ~~prohibited~~ Limitation on Electronic Recording. No camera, sound or video  
33 recorder, or other device, ~~except one operated for an official purpose, by or under~~  
34 ~~the direction of the court,~~ may be used to photograph, record, or broadcast, store,  
35 or transmit a proceeding of the court, ~~nor may those devices be brought in or~~  
36 ~~allowed to remain in the courtroom while a proceeding is in progress~~ without prior  
37 permission from the court. Unless the court permits otherwise, any ~~wireless~~  
38 ~~communication~~ electronic device in the courtroom must be turned off or muted,  
39 and any authorized use of a device must be as minimally disruptive as possible. A  
40 juror may not possess any wireless communication device during deliberations.



41 (e) Arguments of counsel.

42 (1) One counsel per party. Unless otherwise permitted by the court, only  
43 one counsel appearing for a party may be allowed to argue any question to the  
44 court or jury.

45 (2) Unless otherwise permitted by the court, each party is limited to one  
46 hour of argument.

47 EXPLANATORY NOTE

48 Rule 10.1 was amended, effective March 1, 2001, March 1, 2008; March 1,  
49 2015.

50 Subdivision (d) was amended, effective March 1, 2008, to prohibit juror  
51 possession of wireless devices during deliberation.

52 Subdivision (d) was amended, effective March 1, 2015, to update the rule's  
53 prohibition on the use of electronic devices to photograph or record court  
54 proceedings, absent prior permission from the court.

55 Sources: Joint Procedure Committee Minutes of April 24-25, 2014, pages  
56 25-26; September 28-29, 2006, pages 11-12; January 27-28, 2000, pages 17-18;  
57 June 21, 1984, pages 5-6.

58 Cross References: N.D. Sup. Ct. Admin. R. 21 (Electronic and  
59 Photographic Coverage of Court Proceedings).

RULE 11.2. WITHDRAWAL OF ATTORNEYS

1 (a) Notice of withdrawal. An attorney's appearance for a party may only be  
2 withdrawn upon leave of court. Reasonable notice of the motion for leave to  
3 withdraw must be given by personal service, by registered or certified mail, or via  
4 a third-party commercial carrier providing a traceable delivery, directed to the  
5 party at the party's last known business or residence address. If the notice is  
6 undeliverable, the attorney must submit an affidavit to the court reciting the efforts  
7 made to give notice.

8 (b) Motion to withdraw. The motion for leave to withdraw must be in  
9 writing and, unless another attorney is substituted, must state the last known  
10 address, e-mail addresses and telephone numbers of the party represented.

11 (c) Withdrawal on Appeal. If a notice of appeal is filed in a matter, any  
12 attorney seeking leave to withdraw must file the motion with the supreme court  
13 clerk.

14 (d) Limited Appearance. This rule does not apply to attorneys representing a  
15 party under a notice of limited representation served under N.D.R.Civ.P. 11(e)  
16 unless the attorney seeks to withdraw from the limited representation itself.

17 EXPLANATORY NOTE

18 Rule 11.2 was amended, effective March 1, 1999; March 1, 2000; March 1,  
19 2006; March 1, 2009; March 1, 2015.

20 The March 1, 1999, amendments allow notice via a commercial carrier providing a  
21 traceable delivery service.

22 The March 1, 2000, amendments are stylistic.

23 Subdivision (a) was amended, effective March 1, 2015, to require the  
24 attorney, when notice of withdrawal cannot be delivered, to submit an affidavit  
25 regarding the efforts made to provide notice.

26 Subdivision (b) was amended, effective March 1, 2015, to require the  
27 attorney to provide the court with any known party e-mail addresses or telephone  
28 numbers.

29 Subdivision (c) was added, effective March 1, 2006, to make it clear that an  
30 attorney seeking to withdraw from representation in a matter that is on appeal must  
31 file a motion for leave to withdraw with the supreme court clerk. The supreme  
32 court clerk will refer withdrawal motions involving court appointed attorneys to  
33 the trial court for decision and appointment of new counsel.

34 Subdivision (d) was added, effective March 1, 2009, to make it clear that an  
35 attorney who serves a notice of limited representation to represent a party for one  
36 or more matters in a case is not required to formally withdraw upon completion of  
37 activity covered by the notice. Under N.D.R.Civ.P. 11(e), however, the attorney  
38 must serve a notice of termination of limited representation when the attorney's  
39 involvement ends. Rule 11.2 and N.D.R.Civ.P. 5 and 11 were amended to permit  
40 attorneys to assist otherwise unrepresented parties on a limited basis without

41 undertaking full representation of the party.

42 Sources: Joint Procedure Committee Minutes of September 25-26, 2014,  
43 pages 3-4; April 24-25, 2014, pages 26-27; January 24, 2008, pages 2-7; October  
44 11-12, 2007, pages 20-26; September 23-24, 2004, page 29; May 6-7, 1999, pages  
45 15-16; January 29-30, 1998, page 22.

46 Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and  
47 Other Papers), N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers;  
48 Representation to Court; Sanctions); N.D.R. Prof. Conduct 1.2 (Scope of  
49 Representation).

RULE 13. JUDICIAL REFEREES

1           Section 1. Authority.

2           The 1985 Legislative Assembly provided for appointment of judicial  
3 referees under H.B. 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-  
4 30, the Supreme Court adopts the following administrative rule relating to judicial  
5 referees.

6           Section 2. Statement of Policy.

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

11          Section 3. Qualifications of Judicial Referees.

12          Minimum qualifications for a judicial referee include:

13          (a) United States citizenship;

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

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

19          Section 4. Appointment.

20 The presiding judge, on behalf of all of the district court judges of the judicial  
21 district, must execute in writing the appointment of all judicial referees, to serve at  
22 the pleasure of the district court judges of the judicial district. Judicial referees  
23 must be compensated under the personnel system of the North Dakota Judicial  
24 System.

25 Section 5. Scope of Delegable Duties.

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

- 29 (1) N.D.C.C. ch. 12.1-31.2;
- 30 (2) N.D.C.C. title 14, except contested divorce trials;
- 31 (3) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29;
- 32 (4) N.D.C.C. ch. 27-08.1;
- 33 (5) N.D.C.C. ch. 27-20;
- 34 (6) N.D.C.C. ch. 28-25;
- 35 (7) N.D.C.C. § 30.1-28-10.1; and
- 36 (7 8) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2).

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

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

45 (d) The order issued under Subsection (a) of this section must be reduced to  
46 writing and signed by the presiding judge of the judicial district. The order must be  
47 filed with the clerk of district court of each county of the judicial district. The  
48 presiding judge must send a copy of this document to the State Court  
49 Administrator. A copy must be made available to any party upon request.

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

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

#### 55 Section 6. Geographical Jurisdiction.

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

62 Section 7. Proceedings on the Record.

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

65 Section 8. Removal from Referee.

66 Any party to a proceeding before a judicial referee is entitled to have the  
67 matter heard by a district court judge, if written request is filed by the party within  
68 seven days after service of either the initiating documents or other notice  
69 informing the party of this right.

70 Section 9. Standard of Conduct.

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

72 Section 10. Findings and Order.

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

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

78 Section 11. Procedure for Review.

79 (a) Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in  
80 traffic cases under N.D.C.C. § 39-06.1-03, A a review of the findings and order of  
81 a judicial referee may be ordered at any time by a district court judge and must be  
82 ordered if a party files a written request for review within seven days after service



83 of the notice in Section 10(b). The request for review must state the reasons for the  
84 review. A party requesting review must give notice to all other parties. A party  
85 seeking to respond to a request for review must file a response within 14 days after  
86 service of notice of the request.

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

89 (1) adopt the referee's findings;

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

91 (3) reject the referee's findings.

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

#### 94 EXPLANATORY NOTE

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

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

104 Section 5 was amended, effective March 1, 2014, to allow a presiding judge to  
105 authorize a judicial referee to preside in small claims and traffic court proceedings.

106 Section 5 was amended, effective March 1, 2015, to allow a presiding judge  
107 to authorize a judicial referee to preside in emergency guardianship proceedings.

108 Section 7 was amended, effective March 1, 2014, to clarify that small  
109 claims and traffic court matters decided by a judicial referee are not heard on the  
110 record.

111 Section 8 was amended, effective March 1, 2011, to increase the time to  
112 request a district court judge from five to seven days after service of initiating  
113 documents. A “proceeding” under this rule has the same meaning as a proceeding  
114 under N.D.C.C. § 29-15-21.

115 Section 11(a) was amended, effective March 1, 2011, to increase the time to  
116 request a review from a district court judge from five to seven days after service of  
117 the right to review. The time to respond to a request for review was increased from  
118 10 to 14 days after service of notice of the request.

119 Section 11(a) was amended, effective March 1, 2014, to clarify that small  
120 claims and traffic court matters decided by a judicial referee are not reviewable or  
121 appealable.

122 Source: Joint Procedure Committee Meeting Minutes of April 24-25, 2014,  
123 pages 10-12; September 26, 2013, pages 2-6, January 31-February 1, 2013, page  
124 29; September 23-24, 2010, pages 14-15, 21; April 29-30, 2010, page 21; April 24-

125 25, 2003, page 3; January 30-31, 2003, pages 21-23; April 25-26, 2002, pages 16-  
126 17; May 6-7, 1999, pages 14-15; April 29-30, 1993, page 2. Court Services  
127 Administration Committee Meeting Minutes of May 17, 1985, pages 2-4. Family  
128 Caselaw Referee Study Subcommittee of Court Services Administration  
129 Committee Meeting Minutes of April 19, 1985, pages 3-8; March 15, 1985, pages  
130 1-6; February 22, 1985, pages 1-9; January 11, 1985, pages 2-8; and December 17,  
131 1984, page 5. N.D. Const. art. VI, § 3; and N.D.C.C. § 27-05-30.

132 [Adopted as emergency rule effective June 13, 1985; readopted September  
133 17, 1985; amended effective March 1, 1994; January 1, 1995; March 1, 2000;  
134 March 1, 2003; March 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012;  
135 September 1, 2013; March 1, 2014; March 1, 2015.]

RULE 41. ACCESS TO COURT RECORDS

1 Section 1. Purpose.

2 The purpose of this rule is to provide a comprehensive framework for  
3 public access to court records. Every member of the public will have access to  
4 court records as provided in this rule.

5 Section 2. Definitions.

6 (a) "Court record," regardless of the form, includes:

7 (1) any document, information, or other thing that is collected, received, or  
8 maintained by court personnel in connection with a judicial proceeding;

9 (2) any index, calendar, docket, register of actions, official record of the  
10 proceedings, order, decree, judgment, minute, and any information in a case  
11 management system created by or prepared by court personnel that is related to a  
12 judicial proceeding; and

13 (3) information maintained by court personnel pertaining to the  
14 administration of the court or clerk of court office and not associated with any  
15 particular case.

16 (b) "Court record" does not include:

17 (1) other records maintained by the public official who also serves as clerk  
18 of court;

19 (2) information gathered, maintained or stored by a governmental agency or

20 other entity to which the court has access but which is not part of the court record  
21 as defined in this rule; and

22 (3) a record that has been disposed of under court records management  
23 rules.

24 (c) "Public access" means that the public may inspect and obtain a copy of  
25 the information in a court record.

26 (d) "Remote access" means the ability to electronically search, inspect, or  
27 copy information in a court record without the need to physically visit the court  
28 facility where the court record is maintained.

29 (e) "Bulk distribution" means the distribution of all, or a significant subset,  
30 of the information in court records, as is and without modification or compilation.

31 (f) "Compiled information" means information that is derived from the  
32 selection, aggregation or reformulation by the court of some of the information  
33 from more than one individual court record.

34 (g) "Electronic form" means information in a court record that exists as:

35 (1) electronic representations of text or graphic documents;

36 (2) an electronic image, including a video image, of a document, exhibit or  
37 other thing;

38 (3) data in the fields or files of an electronic database; or

39 (4) an audio or video recording, analog or digital, of an event or notes in an  
40 electronic file from which a transcript of an event can be prepared.

41 Section 3. General Access Rule.

42 (a) Public Access to Court Records.

43 (1) Information in the court record is accessible to the public except as  
44 prohibited by this rule.

45 (2) There must be a publicly accessible indication of the existence of  
46 information in a court record to which access has been prohibited, which  
47 indication may not disclose the nature of the information protected.

48 (3) A court may not adopt a more restrictive access policy or otherwise  
49 restrict access beyond that provided for in this rule, nor provide greater access than  
50 that provided for in this rule.

51 (b) When Court Records May Be Accessed.

52 (1) Court records in a court facility must be available for public access  
53 during normal business hours. Court records in electronic form to which the court  
54 allows remote access will be available for access subject to technical systems  
55 availability.

56 (2) Upon receiving a request for access to information, the clerk of court  
57 must respond as promptly as practical. If a request cannot be granted promptly, or  
58 at all, an explanation must be given to the requestor as soon as possible. The  
59 requestor has a right to at least the following information: the nature of any  
60 problem preventing access and the specific statute, federal law, or court or  
61 administrative rule that is the basis of the denial. The explanation must be in

62 writing if desired by the requestor.

63 (c) Access to Court Records Filed Before March 1, 2009. Court records  
64 filed before the adoption of N.D.R.Ct. 3.4 may contain protected information listed  
65 under N.D.R.Ct. 3.4(a). This rule does not require the review and redaction of  
66 protected information from a court record that was filed before the adoption of  
67 N.D.R.Ct. 3.4 on March 1, 2009.

68 (d) Fees for Access. The court may charge a fee for access to court records  
69 in electronic form, for remote access, for bulk distribution or for compiled  
70 information. To the extent that public access to information is provided exclusively  
71 through a vendor, the court will ensure that any fee imposed by the vendor for the  
72 cost of providing access is reasonable.

73 Section 4. Methods of Access to Court Records.

74 (a) Access to Court Records at Court Facility.

75 (1) Request for Access. Any person desiring to inspect, examine, or copy a  
76 court record must make an oral or written request to the clerk of court. If the  
77 request is oral, the clerk may require a written request if the clerk determines that  
78 the disclosure of the record is questionable or the request is so involved or lengthy  
79 as to need further definition. The request must clearly identify the record requested  
80 so that the clerk can locate the record without doing extensive research.

81 Continuing requests for a document not yet in existence may not be considered.

82 (2) Response to Request. The clerk of court is not required to allow access

83 to more than ten files per day per requestor but may do so in the exercise of the  
84 clerk's discretion if the access will not disrupt the clerk's primary function. If the  
85 request for access and inspection is granted, the clerk may set reasonable time and  
86 manner of inspection requirements that ensure timely access while protecting the  
87 integrity of the records and preserving the affected office from undue disruption.  
88 The inspection area must be within full view of court personnel whenever possible.  
89 The person inspecting the records may not leave the court facility until the records  
90 are returned and examined for completeness.

91 (3) Response by Court. If a clerk of court determines there is a question  
92 about whether a record may be disclosed, or if a written request is made under  
93 Section 6(b) for a ruling by the court after the clerk denies or grants an access  
94 request, the clerk must refer the request to the court for determination. The court  
95 must use the standards listed in Section 6 to determine whether to grant or deny the  
96 access request.

97 (b) Remote Access to Court Records. The following information in court  
98 records must be made remotely accessible to the public if it exists in electronic  
99 form, unless public access is restricted under this rule:

- 100 (1) litigant/party indexes to cases filed with the court;  
101 (2) listings of new case filings, including the names of the parties;  
102 (3) register of actions showing what documents have been filed in a case;  
103 (4) calendars or dockets of court proceedings, including the case number



104 and caption, date and time of hearing, and location of hearing; and

105 (5) reports specifically developed for electronic transfer approved by the  
106 state court administrator and reports generated in the normal course of business, if  
107 the report does not contain information that is excluded from public access under  
108 Section 5 or 6.

109 (c) Requests for Bulk Distribution of Court Records.

110 (1) Bulk distribution of information in the court record is permitted for  
111 court records that are publicly accessible under Section 3(a).

112 (2) A request for bulk distribution of information not publicly accessible  
113 can be made to the court for scholarly, journalistic, political, governmental,  
114 research, evaluation or statistical purposes when the identification of specific  
115 individuals is ancillary to the purpose of the inquiry. Prior to the release of  
116 information under this subsection the requestor must comply with the provisions of  
117 Section 6.

118 (3) A court may allow a party to a bulk distribution agreement access to  
119 birth date, street address, and social security number information if the party  
120 certifies that it will use the data for legitimate purposes as permitted by law.

121 (d) Access to Compiled Information From Court Records.

122 (1) Any member of the public may request compiled information that  
123 consists solely of information that is publicly accessible and that is not already in  
124 an existing report. The court may compile and provide the information if it

125 determines, in its discretion, that providing the information meets criteria  
126 established by the court, that the resources are available to compile the information  
127 and that it is an appropriate use of public resources. The court may delegate to its  
128 staff or the clerk of court the authority to make the initial determination to provide  
129 compiled information.

130 (2) Requesting compiled restricted information.

131 (A) Compiled information that includes information to which public access  
132 has been restricted may be requested by any member of the public only for  
133 scholarly, journalistic, political, governmental, research, evaluation, or statistical  
134 purposes.

135 (B) The request must:

136 (i) identify what information is sought,

137 (ii) describe the purpose for requesting the information and explain how the  
138 information will benefit the public interest or public education, and

139 (iii) explain provisions for the secure protection of any information  
140 requested to which public access is restricted or prohibited.

141 (C) The court may grant the request and compile the information if it  
142 determines that doing so meets criteria established by the court and is consistent  
143 with the purposes of this rule, the resources are available to compile the  
144 information, and that it is an appropriate use of public resources.

145 (D) If the request is granted, the court may require the requestor to sign a

146 declaration that:

147 (i) the data will not be sold or otherwise distributed, directly or indirectly, to  
148 third parties, except for journalistic purposes,

149 (ii) the information will not be used directly or indirectly to sell a product or  
150 service to an individual or the general public, except for journalistic purposes, and

151 (iii) there will be no copying or duplication of information or data provided  
152 other than for the stated scholarly, journalistic, political, governmental, research,  
153 evaluation, or statistical purpose.

154 The court may make such additional orders as may be needed to protect  
155 information to which access has been restricted or prohibited.

156 Section 5. Court Records Excluded From Public Access.

157 The following information in a court record is not accessible to the public:

158 (a) information that is not accessible to the public under federal law;

159 (b) information that is not accessible to the public under state law, court  
160 rule, case law or court order, including:

161 (1) affidavits or sworn testimony and records of proceedings in support of  
162 the issuance of a search or arrest warrant pending the return of the warrant;

163 (2) information in a complaint and associated arrest or search warrant to the  
164 extent confidentiality is ordered by the court under N.D.C.C. §§ 29-05-32 or 29-  
165 9-22;

166 (3) documents filed with the court for in-camera examination pending

167 disclosure;

168 (4) case information and documents in Child Relinquishment to Identified  
169 Adoptive Parent cases brought under N.D.C.C. ch. 14-15.1;

170 (5) domestic violence protection order files and disorderly conduct  
171 restraining order files when the restraining order is sought due to domestic  
172 violence, except for orders of the court;

173 (6) documents in domestic violence protection order and disorderly conduct  
174 restraining order cases in which the initial petition was dismissed summarily by the  
175 court without ~~further~~ a contested hearing;

176 (7) names of qualified or summoned jurors and contents of jury  
177 qualification forms if disclosure is prohibited or restricted by order of the court;

178 (8) records of voir dire of jurors, unless disclosure is permitted by court  
179 order or rule;

180 (9) records of deferred impositions of sentences resulting in dismissal;

181 (10) unless exempted from redaction by N.D.R.Ct. 3.4(c), protected  
182 information:

183 (A) except for the last four digits, social security numbers, taxpayer  
184 identification numbers, and financial account numbers,

185 (B) except for the year, birth dates, and

186 (C) except for the initials, the name of an individual known to be a minor,  
187 unless the minor is a party, and there is no statute, regulation, or rule mandating

188 nondisclosure;

189 (11) judge and court personnel work material, including personal calendars,  
190 communications from law clerks, bench memoranda, notes, work in progress, draft  
191 documents and non-finalized documents.

192 (c) This rule does not preclude access to court records by the following  
193 persons in the following situations:

194 (1) federal, state, and local officials, or their agents, examining a court  
195 record in the exercise of their official duties and powers.

196 (2) parties to an action and their attorneys examining the court file of the  
197 action, unless restricted by order of the court, but parties and attorneys may not  
198 access judge and court personnel work material in the court file.

199 (d) A member of the public may request the court to allow access to  
200 information excluded under Section 5 as provided in Section 6.

201 Section 6. Requests to Prohibit Public Access to Information in Court  
202 Records or to Obtain Access to Restricted Information.

203 (a) Request to Prohibit Access.

204 (1) A request to the court to prohibit public access to information in a court  
205 record may be made by any party to a case, by the individual about whom  
206 information is present in the court record, or on the court's own motion on notice  
207 as provided in Section 6(c).

208 (2) The court must decide whether there are sufficient grounds to overcome

209 the presumption of openness of court records and prohibit access according to  
210 applicable constitutional, statutory and case law.

211 (3) In deciding whether to prohibit access the court must consider that the  
212 presumption of openness may only be overcome by an overriding interest. The  
213 court must articulate this interest along with specific findings sufficient to allow a  
214 reviewing court to determine whether the closure order was properly entered.

215 (4) The closure of the records must be no broader than necessary to protect  
216 the articulated interest. The court must consider reasonable alternatives to closure,  
217 such as redaction or partial closure, and the court must make findings adequate to  
218 support the closure. The court may not deny access only on the ground that the  
219 record contains confidential or closed information.

220 (5) In restricting access the court must use the least restrictive means that  
221 will achieve the purposes of this rule and the needs of the requestor.

222 (6) If the court concludes, after conducting the balancing analysis and  
223 making findings as required by paragraphs (1) through (5), that the interest of  
224 justice will be served, it may prohibit public Internet access to an individual  
225 defendant's electronic court record in a criminal case:

226 (A) if the charges against the defendant are dismissed; or

227 (B) if the defendant is acquitted. If the court grants a request to prohibit  
228 public Internet access to an electronic court record in a criminal case, the search  
229 result for the record must display the words "Internet Access Prohibited under

230 N.D.Sup.Ct. Admin.R 41."

231 (b) Request to Obtain Access.

232 (1) A request to obtain access to information in a court record to which  
233 access is prohibited under Section 4(a), 5 or 6(a) may be made to the court by any  
234 member of the public or on the court's own motion on notice as provided in  
235 Section 6(c).

236 (2) In deciding whether to allow access, the court must consider whether  
237 there are sufficient grounds to overcome the presumption of openness of court  
238 records and continue to prohibit access under applicable constitutional, statutory  
239 and case law. In deciding this the court must consider the standards outlined in  
240 Section 6(a).

241 (c) Form of Request.

242 (1) The request must be made by a written motion to the court.

243 (2) The requestor shall give notice to all parties in the case.

244 (3) The court may require notice to be given by the requestor or another  
245 party to any individuals or entities identified in the information that is the subject  
246 of the request. When the request is for access to information to which access was  
247 previously prohibited under Section 6(a), the court must provide notice to the  
248 individual or entity that requested that access be prohibited.

249 Section 7. Obligations Of Vendors Providing Information Technology  
250 Support To A Court To Maintain Court Records.

251 (a) If the court contracts with a vendor to provide information technology  
252 support to gather, store, or make accessible court records, the contract will require  
253 the vendor to comply with the intent and provisions of this rule. For purposes of  
254 this section, "vendor" includes a state, county or local governmental agency that  
255 provides information technology services to a court.

256 (b) By contract the vendor will be required to notify the court of any  
257 requests for compiled information or bulk distribution of information, including  
258 the vendor's requests for such information for its own use.

259

#### EXPLANATORY NOTE

260 Adopted on an emergency basis effective October 1, 1996; Amended and  
261 adopted effective November 12, 1997; March 1, 2001; July 1, 2006; March 1,  
262 2009; March 15, 2009; March 1, 2010; March 1, 2012; March 1, 2015. Appendix  
263 amended effective August 1, 2001, to reflect the name change of State Bar Board  
264 to State Board of Law Examiners.

265 Section 3(c) was adopted, effective March 1, 2010, to state that protected  
266 information may be contained in court records filed before the adoption of  
267 N.D.R.Ct. 3.4.

268 Section 4(c) was amended, effective March 15, 2009, to allow parties who  
269 enter into bulk distribution agreements with the courts to have access to birth date,  
270 street address, and social security number information upon certifying compliance



271 with laws governing the security of protected information. Such laws include the  
272 Federal Fair Credit Reporting Act, the Gramm Leach Bliley Act, the USA Patriot  
273 Act and the Driver's Privacy Protection Act.

274 Section 5(b)(6) was amended, effective March 1, 2015, to clarify that the  
275 restriction on public access to documents in domestic violence protection order  
276 and disorderly conduct restraining order cases under this paragraph is limited to  
277 cases that were dismissed summarily.

278 Section 5(b)(8) was amended, effective March 15, 2009, to list types of  
279 protected information open to the public. The term "financial-account number" in  
280 Section 5(b)(8) includes any credit, debit or electronic fund transfer card number,  
281 and any other financial account number.

282 Section 5(b)(8) was amended, effective March 1, 2010, to incorporate the  
283 exemptions from redaction contained in N.D.R.Ct. 3.4(b). A document containing  
284 protected information that is exempt from redaction under N.D.R.Ct. 3.4(b) is  
285 accessible to the public.

286 Section 6(a)(6) was added, effective March 1, 2012, to provide a method for  
287 the court to prohibit public Internet access to an electronic case record when  
288 charges against a defendant are dismissed or the defendant is acquitted. A request  
289 under Section 6(a)(1) is required before the court can act to prohibit access under  
290 Section 6(a)(6).

291 Nothing in this rule or N.D.R.Ct. 3.4 precludes a clerk of court or the

292 electronic case management system from identifying non-confidential records that  
293 match a name and date of birth or a name and social security number.

294 Joint Procedure Committee Minutes of April 24-25, 2014, page 27; April  
295 28-29, 2011, pages 9-12; September 23-24, 2010, pages 16-20; September 24-25,  
296 2009, pages 8-9; May 21-22, 2009, pages 28-44; January 29-20, 2009, pages 3-4;  
297 September 25, 2008, pages 2-6; January 24, 2008, pages 9-12; October 11-12,  
298 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005, pages 6-  
299 16; April 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January 29-30,  
300 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-  
301 12. Court Technology Committee Minutes of June 18, 2004; March 19, 2004;  
302 September 12, 2003; Conference of Chief Justices/Conference of State Court  
303 Administrators: Guidelines for Public Access to Court Records.

304 Cross Reference: N.D.R.Ct. 3.4 (Privacy Protection for Filings Made With  
305 the Court).

RULE 52. ~~INTERACTIVE TELEVISION~~, CONTEMPORANEOUS TRANSMISSION BY  
RELIABLE ELECTRONIC MEANS

1           Section 1. Purpose and Definition. This rule provides a framework for the  
2           use of ~~interactive television~~ contemporaneous audio or audiovisual transmission by  
3           reliable electronic means in North Dakota's district and municipal courts. This rule  
4           is intended to enhance the current level of judicial services available within the  
5           North Dakota court system through the use ~~interactive television~~ reliable electronic  
6           means and not in any way to reduce the current level of judicial services.

7           Section 2. In General.

8           (A) Subject to the limitations in Sections 3, 4 and 5, a district or municipal  
9           court may conduct a proceeding by ~~interactive television~~ reliable electronic means  
10          on its own motion or on a party's motion.

11          (B) A party wishing to use ~~interactive television~~ reliable electronic means  
12          must obtain prior approval from the court after providing notice to other parties.

13          (C) Parties must coordinate approved ~~interactive television~~ reliable  
14          electronic means proceedings with the court to facilitate scheduling and ensure  
15          equipment compatibility.

16          (D) Each ~~interactive television~~ site where reliable electronic means are used  
17          in a court proceeding must provide a facility for a confidential attorney-client  
18          conference.

19 (E) A method for electronic transmission of documents must be available at  
20 each ~~interactive television~~ site where reliable electronic means are used in a court  
21 proceeding for use in conjunction with ~~an interactive television~~ the proceeding.

22 Section 3. Civil Action. In a civil action, a district or municipal court may  
23 conduct a hearing, conference, or other proceeding, or take testimony, by  
24 ~~interactive television~~ reliable electronic means.

25 Section 4. Criminal Action.

26 (A) In a criminal action, a district or municipal court may conduct a  
27 hearing, conference, or other proceeding by ~~interactive television~~ reliable  
28 electronic means, except as otherwise provided in Section 4 (B).

29 (B) Exceptions.

30 (1) A defendant may not plead guilty nor be sentenced by ~~interactive~~  
31 ~~television~~ reliable electronic means unless the parties consent.

32 (2) A witness may not testify by ~~interactive~~ reliable electronic means unless  
33 the defendant knowingly and voluntarily waives the right to have the witness  
34 testify in person.

35 (3) An attorney for a defendant must be present at the ~~interactive television~~  
36 site where the defendant is located unless the attorney's participation by reliable  
37 electronic means from another location is approved by the court with the consent  
38 of the defendant. In a guilty plea proceeding, the court may not allow the  
39 defendant's attorney to participate from a site separate from the defendant unless:

40 (a) the court makes a finding on the record that the attorney's participation  
41 from the separate site is necessary;

42 (b) the court confirms on the record that the defendant has knowingly and  
43 voluntarily consented to the attorney's participation from a separate site; and

44 (c) the court allows confidential attorney-client communication, if  
45 requested.

46 Section 5. Mental Health Proceeding.

47 (A) In a mental health proceeding, a district court may conduct a proceeding  
48 by ~~interactive television~~ reliable electronic means, and allow the following  
49 persons to appear or present testimony:

50 (1) the respondent or patient;

51 (2) a witness;

52 (3) legal counsel for a party.

53 (B) Notice, Objection, and Waiver.

54 (1) Notice. Before holding any mental health proceeding by ~~interactive~~  
55 ~~television~~ reliable electronic means, the court must give notice to the petitioner and  
56 the respondent. The notice must:

57 (a) advise the parties of their right to object to the use of ~~interactive~~  
58 ~~television~~ reliable electronic means;

59 (b) inform the respondent that the proceedings may be recorded on video  
60 and that, if there is an appeal, the video recording may be made part of the

61 appendix on appeal and is part of the record on appeal.

62 (2) Objection.

63 (a) ~~Interactive television~~ Reliable electronic means may not be used in a  
64 mental health proceeding if any party objects. The respondent must be given the  
65 opportunity to consult with an attorney about the right to object to the use of  
66 ~~interactive television~~ reliable electronic means.

67 (b) If the respondent fails to make an objection or fails to make a timely  
68 objection to the use of ~~interactive television~~ reliable electronic means, the court  
69 may nevertheless continue the proceeding for good cause.

70 (c) If the proceeding is continued, the respondent will continue to be held at  
71 the facility where the respondent was receiving treatment or, at the choice of the  
72 treatment provider in a less restrictive setting, until a face-to-face hearing can be  
73 completed.

74 (d) A face-to-face hearing must be scheduled to occur within four days,  
75 exclusive of weekends and holidays, of the date the objection was made, unless  
76 good cause is shown for holding it at a later time.

77 (3) Waiver. Upon mutual consent of the parties, and with the approval of  
78 the court, notice requirements in a mental health proceeding may be waived to  
79 allow for the conduct of proceedings without prior notice or with notice that does  
80 not conform to Section 5 (B) (1).

81 Section 6. Effective Date. This rule is effective June 1, 2005, and remains in

82 effect until further order of the supreme court. This rule was amended to extend to  
83 proceedings conducted by contemporaneous audio or audiovisual transmission  
84 using reliable electronic means effective March 1, 2015.