

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

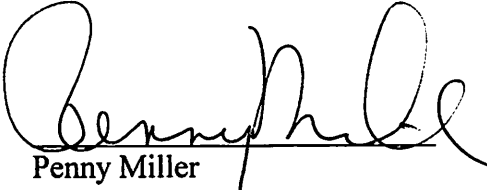
Supreme Court No. 20180289

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

[¶1] On December 11, 2018, the Court entered an order approving amendments, effective March 1, 2019, to N.D.R.Civ.P. 56; N.D.R.Crim.P. 11, 24, 32, 32.1, 32.2 and 35; N.D.R.App.P. 2.1, 3, 14, 24, 25, 28, 31, 32, 34, 40 and 35.1; N.D.R.Ev. 803 and 902; N.D.R.Ct. 3.1, 3.5 and Appendix K; and N.D. Sup. Ct. Admin. R. 50 and 52. On its own motion, the Court considered further amendments to N.D.R.App.P. 25, and

[¶2] **IT IS ORDERED**, that the additional amendments to N.D.R.Crim.P. 25 are ADOPTED effective March 1, 2019.

[¶3] The Supreme Court of the State of North Dakota convened the 9th day of January, 2019, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen, Justices, directing the Clerk of the Supreme Court to enter the above order. The Honorable Daniel J. Crothers, being unavoidably absent, did not participate in the decision.



Penny Miller
Clerk
North Dakota Supreme Court

RULE 25. FILING AND SERVICE

(a) Filing.

(1) Filing with the Clerk. A document required or permitted to be filed in the supreme court must be filed with the clerk of the supreme court.

(2) Filing: Method and Timeliness.

(A) In general. Filing may be accomplished by mail or delivery addressed to the clerk or by electronic means as provided in these rules, but filing is not timely unless the clerk receives the documents within the time fixed for filing. If a document submitted for filing is rejected, the time for filing is tolled from the time of submission to the time the rejection notice is sent. A corrected document will be considered timely filed if submitted and served within three days after the notice of rejection is sent.

(B) Brief, appendix, transcript or petition for rehearing. A brief, appendix, transcript, or petition for rehearing is considered filed on the day of electronic filing, or mailing or deposit with a third-party commercial carrier.

(C) Electronic filing. Documents ~~may~~ must be filed by electronic means to the extent provided and under procedures established in these rules. Self-represented litigants and prisoners are exempt from the electronic filing requirement and may file paper documents in person, by mail, or by third party commercial carrier. A document filed by electronic means in compliance with these rules constitutes a written document for the purpose of applying these rules.

(i) Documents, except an appendix, may be filed electronically with the clerk of

23 the supreme court by facsimile only if e-mail submission is not possible.

24 (ii) The typed attorney or party name or facsimile signature on a document filed
25 electronically has the same effect as an original manually affixed signature.

26 (iii) A document in compliance with these rules and submitted electronically to the
27 clerk of the supreme court by 11:59 p.m. Bismarck, North Dakota, time is considered
28 filed on the date submitted. Upon receiving an electronic document, the clerk of the
29 supreme court will issue an e-mail confirmation that the document has been received.

30 (iv) A party filing a document electronically must pay a any docket fee, fee to file
31 electronically, or any surcharge for internal reproduction of the document by the supreme
32 court if the party files a motion in excess of 20 pages in length -- including attachments,
33 exhibits or appendices -- or an appendix in excess of 100 pages in length. The surcharge
34 is \$ 0.50 per page for each page in excess of the limit.

35 ~~a. No payment is required for motions, comments, and other documents less than~~
36 ~~20 pages in length, including appendices or attachments. A party electronically filing a~~
37 ~~motion, comment, or other document must pay \$0.50 per page for each page in excess of~~
38 ~~20 pages. The charges under this subparagraph apply to any attachments, exhibits, or~~
39 ~~appendices that are electronically filed with a motion.~~

40 ~~b. A party electronically filing any brief, whether in an appeal, request for~~
41 ~~supervision, or request for a writ, must pay \$25. No payment is required for a reply brief~~
42 ~~or a petition for rehearing.~~

43 ~~c. No payment is required for an appendix filed 100 pages or less in length. A~~
44 ~~party must pay \$.50 per page for each appendix page in excess of 100 pages.~~

45 ~~(v) A party must pay all required fees and payments within seven days of~~
46 ~~submitting a document filed electronically. If fees and payments are not paid within seven~~
47 ~~days of submission, the document will be returned by the clerk of the supreme court and~~
48 ~~the party will be required to refile the document.~~

49 (3) Electronic Document Formats. All documents submitted to the court in
50 electronic form must be in approved word processing format or portable document format
51 (.pdf PDF). Documents filed in PDF format must be directly converted from a word
52 processing file, rather than scanned if possible. Documents or parts of documents not
53 available in electronic form may be converted to PDF from scanned images. To the extent
54 practicable, PDF documents converted from scanned images should be text-searchable.
55 Electronically filed documents may not be locked, password protected, or contain
56 embedded files or scripts.

57 (A) Approved word processing formats for documents submitted in electronic
58 form are WordPerfect, Word, and ASCII. Parties must obtain permission from the clerk
59 of the supreme court in advance if they seek to submit documents in another word
60 processing format.

61 (B) Hard page breaks must separate the cover, table of contents, table of cases, and
62 body of approved word processing format briefs.

63 (C) An appendix may be filed electronically in portable document format (.pdf
64 PDF). Except for limited excerpts showing a court's reasoning, district court transcripts
65 that have been filed electronically with the supreme court may not be included in an
66 appendix filed electronically.

67 (4) Filing Motion with Justice. If a motion requests relief that may be granted by a
68 single justice, the justice may receive the motion for filing; the justice must note the filing
69 date on the motion and give it to the clerk.

70 (5) Filing with the Clerk. Any document filed with the clerk of the supreme court
71 by e-mail by the district court or counsel must be sent to the following e-mail address:
72 supclerkofcourt@ndcourts.gov.

73 (b) Service of All Documents Required. Unless a rule requires service by the clerk,
74 a party must, at or before the time of filing a document, serve a copy on the other parties
75 to the appeal or review. Service on a party represented by counsel must be made on the
76 party's counsel.

77 (c) Manner of Service.

78 (1) Service may be any of the following:

79 (A) personal, including delivery to a clerk or a responsible person at the office of
80 counsel;

81 (B) by mail;

82 (C) by third-party commercial carrier for delivery within three days; or

83 (D) by electronic means.

84 (2) When reasonable, considering such factors as the immediacy of the relief
85 sought, distance and cost, service on a party must be by a manner at least as expeditious
86 as the manner used to file the document with the court. If a party files a document by
87 electronic means, the party must serve the document by electronic means unless the
88 recipient of service cannot accept electronic service.

89 (3) Service by mail is complete upon mailing. Service via a third-party commercial
90 carrier is complete upon deposit of the document to be served with the commercial
91 carrier. Service by electronic means is complete on transmission, unless the party making
92 service is notified that the document was not received by the party served.

93 (4) Electronic Service.

94 (A) ~~If a party files a document by electronic means, the party must serve the~~
95 ~~document by electronic means unless the recipient of service cannot accept documents~~
96 ~~served electronically~~ All documents filed electronically must be served electronically
97 except paper documents must be served when a self-represented litigant or prisoner
98 cannot accept electronic service.

99 (B) Attorneys appearing before or filing with the supreme court must provide an
100 e-mail address to the court and must accept electronic service. Attorneys may designate a
101 law firm e-mail address as their e-mail address for the purpose of accepting electronic
102 service. If the recipient's e-mail address is published on the supreme court's website or
103 known to a party, the document must be served by electronic means to that e-mail
104 address.

105 (C) Documents served electronically may be served by facsimile only if e-mail
106 service is not possible and only if prior permission to serve by facsimile is granted by the
107 recipient.

108 (D) If a recipient cannot accept electronic service of a document, service under
109 another means specified by N.D.R.App.P. 25(c) is required.

110 (d) Proof of Service. A document presented for filing must contain an

111 acknowledgment of service by the person served or proof of service by the person who
112 made service. Proof of service may appear on or be affixed to the document filed. The
113 clerk may permit a document to be filed without acknowledgment or proof of service but
114 must require acknowledgment or proof of service to be filed promptly.

115 EXPLANATORY NOTE

116 Rule 25 was amended, effective January 1, 1988; on an emergency basis,
117 September 5, 1990; on an emergency basis, November 16, 1994; March 1, 1996; March 1,
118 1999; March 1, 2003; March 1, 2008; March 1, 2011; October 1, 2014; March 1, 2019.

119 This rule is derived from Fed.R.App.P. 25. Rule 25 was amended, effective March
120 1, 1999, to allow the use of a third-party commercial carrier as an alternative to the Postal
121 Service. The phrase "commercial carrier" is not intended to encompass electronic delivery
122 services.

123 Subdivision (a) provides documents are not considered filed until they are received
124 by the clerk of the supreme court. Briefs, appendices, transcripts, and petitions for
125 rehearing are exceptions to this general rule.

126 Subparagraph (a)(2)(C), effective March 1, 2003, allows the court to accept
127 documents filed by electronic means.

128 Subparagraph (a)(2)(C) was amended, effective March 1, 2019, to require
129 electronic filing by all parties other than self-represented litigants and prisoners and to
130 eliminate fees that applied specifically to electronic filing.

131 Paragraph (a)(3) was amended, effective March 1, 2019, to add requirements for
132 documents filed electronically.

133 Subdivisions (a) and (c) were amended, effective October 1, 2014, to incorporate
134 N.D. Sup. Ct. Admin. Order 14 and to conform the rule to electronic filing. N.D. Sup. Ct.
135 Admin. Order 14 was repealed, effective October 1, 2014.

136 Subdivision (c) was amended, effective March 1, 2008, to provide for service by
137 electronic means.

138 Subparagraph (c)(1)(C) was amended, effective March 1, 2011, to change the
139 reference from "calendar days" to "days."

140 Subparagraph (c)(4)(A) was amended, effective March 1, 2019, to require
141 electronic service of documents filed electronically except when a self-represented
142 litigant or prisoner cannot accept electronic service.

143 Subdivision (d) allows proof of service by admission of service, affidavit of
144 service, or certificate of an attorney.

145 Rule 25 was amended, effective March 1, 2003, in response to the December 1,
146 1998, amendments to Fed. R. App. P. 25. The language and organization of the rule were
147 changed to make the rule more easily understood and to make style and terminology
148 consistent throughout the rules.

149 Rule 25 was amended, effective October 1, 2014, to replace "supreme court clerk"
150 with "clerk of the supreme court" and "paper" with "document."

151 SOURCES: Joint Procedure Committee Minutes of April 27, 2018, pages 2-4;
152 January 25, 2018, pages 11-12; September 26, 2013, page 22-24; April 29-30, 2010, page
153 20; January 25, 2007, page 17; April 25-26, 2002, pages 3-5; April 26-27, 2001, page 10;
154 April 30-May 1, 1998, page 3; January 29-30, 1998, page 21; January 26-27, 1995, pages

155 6-7; September 29-30, 1994, page 12; February 19-20, 1987, pages 6-7; September 18-19,
156 1986, pages 14-15; May 25-26, 1978, page 10; March 16-17, 1978, pages 3-4.
157 Fed.R.App.P. 25.

158 STATUTES AFFECTED:

159 SUPERSEDED: N.D.C.C. § 28-27-05.

160 CROSS REFERENCE: N.D.R.App.P. 10 (The Record on Appeal); N.D.R.App.P.
161 26(c) (Computing and Extending Time).