

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

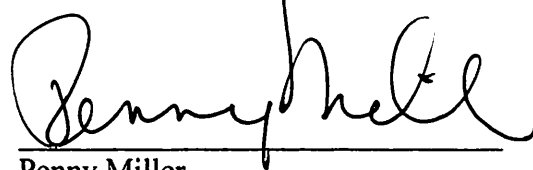
Supreme Court No. 20190177

**Proposed Amendments to Rule 11, North Dakota Rules of Civil Procedure, and Rules 3, 4
and 41, North Dakota Rules of Criminal Procedure, in Response to the
Uniform Domestic Declarations Act**

[¶1] On June 6, 2019, the Joint Procedure Committee filed a petition to amend North Dakota Rules of Civil Procedure 11 and North Dakota Rules of Criminal Procedure 3, 4, and 41 in response to the Uniform Domestic Declarations Act. The Court further amended North Dakota Rules of Criminal Procedure 3, 4, and 41, and solicited comments on the proposed amendments. The proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20190177>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶2] IT IS HEREBY ORDERED, that the amendments to North Dakota Rules of Civil Procedure 11 and North Dakota Rules of Criminal Procedure 3, 4, and 41, as distributed for comment, are ADOPTED effective September 15, 2019.

[¶3] The Supreme Court of the State of North Dakota convened this 4th day of September, 2019, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Daniel J. Crothers, 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.



Penny Miller
Clerk
North Dakota Supreme Court

RULE 3. THE COMPLAINT

(a) General. The complaint is a written statement of the essential facts constituting the elements of the offense charged. The complaint must be sworn to and subscribed before an officer authorized by law to administer oaths within this state, or ~~if made by a licensed peace officer~~, must contain a written declaration that it is made and subscribed under penalty of perjury, and be presented to a magistrate. The complaint may be presented as provided in Rule 4.1.

(b) Magistrate Review. The magistrate may examine on oath the complainant and other witnesses and receive any affidavit filed with the complaint. If the magistrate examines the complainant or other witnesses on oath, the magistrate shall cause their statements to be reduced to writing and subscribed by the persons making them or to be recorded.

(c) Amendment. The magistrate may permit a complaint to be amended at any time before a finding or verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. If the prosecuting attorney chooses not to pursue a charge contained in the initial complaint, a dismissal of that charge must be stated on the amended complaint.

EXPLANATORY NOTE

Rule 3 was amended, effective January 1, 1995; March 1, 1996; March 1, 2006; March 1, 2007; August 1, 2011; March 1, 2013; March 1, 2016; March 1, 2017; September 15, 2019.

23 Subdivision (a) was amended, effective January 1, 1995, to allow a complaint to be
24 subscribed and sworn to outside the presence of a magistrate. An effect of this
25 amendment is to allow facsimile transmission of the complaint. For a listing of officers
26 authorized to administer oaths, see N.D.C.C. § 44-05-01. The amendment does not
27 preclude a magistrate from examining a complainant or other witnesses under oath when
28 making the probable cause determination.

29 Subdivision (a) was amended, effective March 1, 1996, to clarify that the
30 complaint is the initial document for charging a person with a misdemeanor or felony.

31 Subdivision (a) was amended, effective March 1, 2007, to specify that the
32 complaint must contain a statement of the facts that establish the elements of the offense
33 charged.

34 Subdivision (a) was amended, effective August 1, 2011, to eliminate language
35 about the complaint being the initial charging document for all criminal offenses.
36 N.D.C.C. § 29-04-05 was amended in 2011 to specify that "A prosecution is commenced
37 when a uniform complaint and summons, a complaint, or an information is filed or when
38 a grand jury indictment is returned."

39 Subdivision (a) was amended, effective March 1, 2013, to allow the complaint to
40 be presented to the magistrate by telephone or other reliable electronic means under Rule
41 4.1.

42 Subdivision (a) was amended, March 1, 2017, to allow a licensed peace officer to
43 make a complaint in a written declaration that it is made and subscribed under penalty of
44 perjury. This amendment facilitates submission of electronic documents to establish the

45 grounds for a complaint. Any electronic signature on a document submitted under this
46 rule by a licensed peace officer is considered to be that of the officer.

47 Subdivision (a) was amended, effective September 15, 2019, to remove language
48 limiting the use of unsworn declarations to peace officers. N.D.C.C. ch. 31-15 allows
49 anyone to make an unsworn declaration that has the same effect as a sworn declaration.
50 N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

51 Subdivision (c) is similar to Rule 7(e).

52 Subdivision (c) was amended, effective March 1, 2016, to require a written
53 dismissal to be stated on the amended complaint if the prosecuting attorney chooses not to
54 pursue charges raised in the initial complaint.

55 Rule 3 was amended, effective March 1, 2006, in response to the December 1,
56 2002, revision of the Federal Rules of Criminal Procedure. The language and organization
57 of the rule were changed to make the rule more easily understood and to make style and
58 terminology consistent throughout the rules.

59 SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 8-10;
60 September 24-25, 2015, pages 14-15, 29; January 26-27, 2012, page 25; April 28-29,
61 2011, pages 17-18; April 24-25, 2003, pages 25-26; January 26-27, 1995, pages 3-5;
62 April 28-29, 1994, pages 20-22; January 27-29, 1972, pages 4-7 September 27-28, 1968,
63 pages 1-2; November 17-18, 1967, page 2.

64 STATUTES AFFECTED:

65 SUPERSEDED: N.D.C.C. §§ 29-01-13(1), 29-05-01 to the extent that it requires a
66 complaint to be sworn, 29-05-02 to the extent that it requires a complaint to be subscribed

67 and sworn to before a magistrate, 29-05-03, 33-12-03, 33-12-04, 33-12-05, 33-12-16,
68 33-12-25.

69 CONSIDERED: N.D.C.C. ch. 31-15, §§ 29-04-05, 12-01-04(12), 29-01-14,
70 29-02-06, 29-02-07, 29-04-05, 29-05-01, 29-05-05.

71 CROSS REFERENCE: N.D.R.Crim.P. 4.1 (Complaint, Warrant, or Summons by
72 Telephone or Other Reliable Electronic Means); N.D.R.Crim.P. 7 (The Indictment and
73 the Information).

RULE 4. ARREST WARRANT OR SUMMONS UPON COMPLAINT

(a) Issuance.

(1) Warrant. If it appears from the complaint; or from an affidavit filed with the complaint, or from a written declaration made and subscribed under penalty of perjury by ~~a licensed peace officer~~, that there is probable cause to believe that a criminal offense has been committed by the defendant, the magistrate must issue an arrest warrant to an officer authorized by law to execute it. [Except as provided in subdivision (a)(2).] The finding of probable cause must be based upon evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the magistrate may examine under oath the complainant and any other witnesses produced, in which case the proceedings must be recorded. A magistrate who has not been admitted to practice law in this state may not issue a warrant until the complaint has been approved by the prosecuting attorney. If it appears to the magistrate from the complaint or other written evidence that the accused is likely to abscond before the prosecuting attorney can approve the complaint, and the magistrate so certifies on the complaint, the magistrate may issue a warrant without approval of the prosecuting attorney.

(2) Summons. The magistrate may issue a summons in lieu of a warrant if the magistrate has reason to believe that the defendant will appear in response to it or if the defendant is a corporation.

23 (3) Failure of Defendant to Appear After Summons. If a defendant fails to appear
24 in response to a summons or there is reasonable cause to believe that the defendant will
25 fail to appear, a magistrate must issue an arrest warrant. If a defendant corporation fails to
26 appear in response to a summons, a magistrate who is empowered to try the offense for
27 which the summons was issued must enter a plea of not guilty and may proceed to trial
28 and judgment without further process; a magistrate who is not so empowered must
29 proceed as though the defendant had appeared.

30 (4) Additional Warrants or Summonses. A magistrate may issue more than one
31 warrant or summons on the same complaint.

32 (5) Warrant or Summons by Telephone or Other Reliable Electronic Means. In
33 accordance with Rule 4.1, the magistrate may issue a warrant or summons based on
34 information communicated by telephone or other reliable electronic means.

35 (b) Form.

36 (1) Warrant. A warrant must:

37 (A) be in writing, in the name of the State of North Dakota;

38 (B) be signed by the issuing magistrate with the title of the magistrate's office;

39 (C) state the date of issuance and the municipality or county where issued;

40 (D) contain the defendant's name or, if it is unknown, a name or description by
41 which the defendant can be identified with reasonable certainty;

42 (E) describe the offense charged against the defendant; and

43 (F) command the defendant be arrested and brought before the nearest available
44 magistrate.

45 The warrant may also have endorsed upon it the recommended or acceptable
46 amount of bail if the offense is bailable.

47 (2) Summons. A summons must be in the same form as the warrant except that it
48 must require the defendant to appear before a magistrate at a stated time and place and
49 must inform the defendant that if the defendant fails to appear, an arrest warrant will
50 issue.

51 (c) Execution; Service.

52 (1) Execution of Warrant. The warrant is directed to all peace officers of this state
53 and may be executed only by a peace officer. It is executed by the arrest of the defendant
54 and may be executed in any county of the state by any peace officer of this state. Upon
55 arrest, an officer possessing the original or a duplicate original warrant must show it to
56 the defendant immediately upon request. If the officer does not possess the warrant at the
57 time of the arrest, the officer must inform the defendant of the warrant's existence and of
58 the offense charged and, at the defendant's request must show the original or a duplicate
59 original warrant or a copy to the defendant as soon as possible.

60 (2) Service of Summons. The summons must be served in the manner provided for
61 service of a summons in a civil action. Any person authorized to serve a summons in a
62 civil action may serve a summons.

63 (d) Return.

64 (1) After executing a warrant, the officer must return it to the magistrate before
65 whom the defendant is brought in accordance with Rule 5. The officer may do so by
66 reliable electronic means. At the request of the prosecuting attorney, an unexecuted

67 warrant must be returned to and canceled by the magistrate who issued it.

68 (2) The person to whom a summons is delivered for service must return it to the
69 magistrate before whom the summons is returnable on or before the return day.

70 (3) At the request of the prosecuting attorney made while a complaint is pending, a
71 magistrate may deliver an unexecuted warrant, an unserved summons, or a copy of the
72 warrant or summons to a peace officer for execution or service.

73 (e) Defective Warrant or Summons; Amendment. No person arrested under a
74 warrant or appearing in response to a summons may be discharged from custody or
75 dismissed because of any informality in the warrant or summons, but the warrant or
76 summons may be amended to remedy the informality.

77 EXPLANATORY NOTE

78 Rule 4 was amended, effective March 1, 2006; March 1, 2013; March 1, 2017;
79 September 15, 2019.

80 Subdivision (a) is derived from the Fed.R.Crim.P. 4. The most important aspect of
81 subdivision (a) is the provision that a warrant for arrest may issue under this rule only if it
82 appears from the complaint, from an examination under oath, or from any affidavit filed
83 with the complaint, that there is probable cause for the magistrate to believe that a
84 criminal offense has been committed by the defendant.

85 Subdivision (a) was amended, effective March 1, 2017, to allow a magistrate, in
86 determining probable cause, to rely on a written declaration made and subscribed under
87 penalty of perjury by a licensed peace officer. This amendment facilitates submission of
88 electronic documents to establish the grounds for a warrant or summons. Any electronic

89 signature on a document submitted under this rule by a licensed peace officer is
90 considered to be that of the officer.

91 Subdivision (a) was amended, effective September 15, 2019, to remove language
92 limiting the use of unsworn declarations to peace officers. N.D.C.C. ch. 31-15 allows
93 anyone to make an unsworn declaration that has the same effect as a sworn declaration.
94 N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

95 Subdivision (a) further provides that a warrant or summons may issue on the basis
96 of hearsay evidence provided the magistrate has adequate reason to believe that the
97 hearsay information is both credible (truthful) and reliable (accurate). These provisions
98 are deemed to be declaratory of existing law. The probable-cause provision must be read
99 in light of the Fourth Amendment. The provision for hearsay merely prescribes the
100 standard of credibility and reliability. It does not attempt to identify the situations in
101 which evidence in the complaint is in fact adequate to meet the twin tests of credibility
102 and reliability. This is an issue which must be dealt with on a case-to-case basis, taking
103 into account the unlimited variations and sources of information and the opportunity of
104 the informant to perceive accurately the factual data which the informant furnishes.

105 Subdivision (a) makes clear that the magistrate may require the complainant to
106 appear personally and may examine the complainant or witnesses to determine whether
107 probable cause exists. If the magistrate does hear from the complainant or witnesses, the
108 testimony must be recorded. This is to insure that there exists an adequate basis for
109 reviewing the propriety of the issuance of the warrant, if, for example, its issuance should
110 be attacked upon a subsequent motion to suppress evidence seized incident to the arrest.

111 Subdivision (a) is also intended to make it possible for the magistrate to issue a summons
112 in lieu of an arrest warrant even though not requested to do so by the prosecuting
113 attorney.

114 Subdivision (a) also provides that where the magistrate is someone other than a
115 person admitted to practice law in this state, the magistrate shall not issue a warrant until
116 the complaint has been approved by the prosecuting attorney. This provision is intended
117 to guard against non-law-trained magistrates, who because of their lack of legal expertise
118 may have a problem with the requirement of probable cause. Subdivision (a), however,
119 does provide that a warrant may be issued by such magistrate without the approval of the
120 prosecuting attorney where the magistrate reasonably believes that the accused is likely to
121 abscond the jurisdiction before the prosecuting attorney can approve the complaint,
122 provided the magistrate so certifies on the complaint.

123 Paragraph (a)(2) provides the magistrate with some latitude in the exercise of
124 discretion to issue the summons in cases where the magistrate reasonably believes that the
125 defendant will appear in response to the summons. Paragraph (a)(2) also provides for the
126 magistrate to issue a summons rather than a warrant where the defendant is a corporation.
127 It provides that a summons will issue to a corporate defendant because as a practical
128 matter it is not literally possible to make an arrest. Furthermore, the probability is that the
129 corporation will appear and that the crime is not one of violence.

130 Paragraph (a)(3) provides a remedy in cases where the defendant fails to answer
131 the summons. It follows the provisions of both Fed.R.Crim.P. 4 (a) and the Model Code
132 of Pre-Arrestment Procedure. This paragraph also provides for anticipatory remedy

133 where there is failure of the summonee to appear.

134 Paragraph (a)(4) provides for the issuance of more than one warrant or summons
135 on the same complaint. The provision for issuance of additional warrants on the same
136 complaint embodies the practice provided in Fed.R.Crim.P. 4(a). When a complaint
137 names several defendants, it may be desirable to issue separate warrants to each defendant
138 in order to facilitate service and return, especially if the defendants are apprehended at
139 different times and places.

140 Paragraph (a)(5) was added, effective March 1, 2013, to allow the magistrate to
141 issue a warrant or summons based on information communicated by telephone or other
142 reliable electronic means under the procedure set out in Rule 4.1.

143 Paragraph (b)(1) describes the form of the warrant. This paragraph requires that
144 the warrant be in writing, that it be in the name of the State of North Dakota, and that it be
145 signed by the issuing magistrate with the title of the magistrate's office. This differs from
146 Fed.R.Crim.P. 4(b), in that the federal rule does not provide for the warrant to be in
147 writing nor does it provide that it be in the name of the jurisdiction. The federal rule
148 further differs in that it does not require that the signature of the issuing officer bear that
149 officer's title, nor does it state the date when issued and the municipality or county where
150 issued. The provision for the issuance of a warrant contemplates that the warrant will be
151 issued in counties other than where the offense occurred.

152 The provision that the warrant be in the name of the State of North Dakota or in the name
153 of a municipality, if the violation of a municipal ordinance is charged, is consistent with
154 these rules in providing for the issuance of a warrant for violations of municipal

155 ordinances which are deemed criminal in nature. The provision for description of the
156 offense charged satisfies the constitutional requirement that notice be given to the
157 defendant of the offense charged.

158 The final provision of paragraph (b)(1) indicates that bail may be endorsed upon
159 the warrant. The provision that a recommendation of an amount of bail acceptable be
160 included in the warrant reflects the notion that the magistrate issuing the warrant is in a
161 better position to determine the bail requirement than would be the nearest available
162 magistrate to whom the defendant is brought, if not the issuing magistrate. The
163 requirement that upon arrest the defendant be brought before the nearest available
164 magistrate is adapted from the criminal rules of Alaska.

165 Paragraph (b)(2) provides that a summons will be in the same form as a warrant (in
166 writing signed by the magistrate who issued it, etc.) and that it contain a warning that
167 failure to respond to it will establish grounds for the issuance of a warrant.

168 Subdivision (c) directs that the warrant shall be directed to all peace officers of this
169 State and further provides for its execution. The provision that the arresting officer need
170 not have the warrant in possession at the time of the arrest is rendered necessary by the
171 fact that a fugitive may be discovered and apprehended by any officer. It is impossible for
172 a warrant to be in the possession of every officer who is searching for a fugitive or who
173 unexpectedly might be in a position to apprehend a fugitive.

174 Paragraph (c)(2) provides for service of summons in substantially the same manner
175 as civil actions under N.D.R.Civ.P. 4. This rule provides essentially the same
176 requirements as Fed.R.Civ.P. 4(c)(1). Provisions for ease of service in the case of a

177 summons reflect the fact that the individual's right to remain at liberty is not infringed.

178 Subdivision (d) governs the return of the warrant or summons and is essentially the
179 same as Fed.R.Crim.P. 4(c)(4). The return is not conclusive and an error in the return
180 does not void the warrant, where no one was misled thereby, and facts stated in the return
181 will not be accepted where testimony shows them to be untrue. This subdivision provides
182 that in the case of an unexecuted warrant and upon request of the prosecuting attorney,
183 the warrant shall be returned to the magistrate who issued it for cancellation. It further
184 provides that a person to whom the summons was delivered shall appear on or before the
185 return date stated on the face of the summons. Finally, subdivision (d) permits reissuance,
186 upon request of the prosecuting attorney, of warrants which have been initially returned
187 unexecuted but which have not been canceled, to be delivered to a peace officer for
188 execution or service.

189 Subdivision (d) was amended, effective March 1, 2013, to allow the officer to
190 return the warrant to the magistrate by reliable electronic means.

191 Subdivision (e) provides a remedy in cases where the warrant or summons is
192 defective. It permits the prosecution to cure a defect which is deemed an informality in
193 the warrant. There shall, however, be dismissal where the warrant is not sufficient on its
194 face.

195 Rule 4 was amended, effective March 1, 2006, in response to the December 1,
196 2002, revision of the Federal Rules of Criminal Procedure. The language and organization
197 of the rule were changed to make the rule more easily understood and to make style and
198 terminology consistent throughout the rules.

199 SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 8-10;
200 September 24-25, 2015, page 28; January 26-27, 2012, page 25-26; January 29-30, 2004,
201 pages 21-22; January 27-29, 1972, pages 7-17; November 20-21, 1969, pages 15-16; May
202 3-4, 1968, pages 3-4; January 26-27, 1968, pages 4-7; Fed.R.Crim.P. 4.

203 STATUTES AFFECTED:

204 SUPERSEDED: N.D.C.C. §§ 29-05-06, 29-05-07, 29-05-08, 29-05-09, 29-05-28,
205 29-05-29, 29-05-30, 33-12-06, 40-18-07, 40-18-08.

206 CONSIDERED: N.D.C.C. ch. 31-15; N.D.C.C. §§ 29-05-10, 29-05-23, 29-05-24,
207 29-05-25, 29-05-26, 29-05-27, 29-05-31, 40-11-11, 40-18-18.

208 CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to
209 Jurisdiction—Process—Service); N.D.R.Crim.P. 4.1 (Complaint, Warrant, or Summons
210 by Telephone or Other Reliable Electronic Means).

RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;
REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature.

(1) In General. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is self-represented. The paper must state the signer's address, electronic mail address for electronic service, and telephone number. If the signer is an attorney, the paper must contain the attorney's State Board of Law Examiners identification number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(2) Notarization Not Required. Unless specifically required by court rule, a document filed with the court in a civil action is not required to be notarized. When any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, subscribed by the maker as true under penalty of perjury, and dated, in substantially the form set out at N.D.C.C. § 31-15-05. following form: "~~I declare (or certify, verify, or state) under penalty of perjury that the~~

23 ~~foregoing is true and correct." In addition to the signature, the date of signing and the~~
24 ~~county and state where the document was signed shall be noted on the document.~~

25 (b) Representations to the Court. By presenting to the court a pleading, written
26 motion, or other paper, whether by signing, filing, submitting, or later advocating it, an
27 attorney or self-represented party certifies that to the best of the person's knowledge,
28 information, and belief, formed after an inquiry reasonable under the circumstances:

29 (1) it is not being presented for any improper purpose, such as to harass, cause
30 unnecessary delay, or needlessly increase the cost of litigation;

31 (2) the claims, defenses, and other legal contentions are warranted by existing law
32 or by a nonfrivolous argument for extending, modifying, or reversing existing law or for
33 establishing new law;

34 (3) the factual contentions have evidentiary support or will likely have evidentiary
35 support after a reasonable opportunity for further investigation or discovery; and

36 (4) the denials of factual contentions are warranted on the evidence or are
37 reasonably based on belief or a lack of information.

38 (c) Sanctions.

39 (1) In General. If, after notice and a reasonable opportunity to respond, the court
40 determines that Rule 11(b) has been violated, the court may impose an appropriate
41 sanction on any attorney, law firm, or party that violated the rule or is responsible for the
42 violation. Absent exceptional circumstances, a law firm must be held jointly responsible
43 for a violation committed by its partner, associate, or employee.

44 (2) Motion for Sanctions. A motion for sanctions must be made separately from

45 any other motion and must describe the specific conduct that allegedly violates Rule
46 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but
47 must not be filed or be presented to the court if the challenged paper, claim, defense,
48 contention, or denial is withdrawn or appropriately corrected within 21 days after service
49 or within another time the court sets. The respondent must have 10 days after a motion for
50 sanctions is filed to serve and file an answer brief and other supporting papers. If
51 warranted, the court may award to the prevailing party the reasonable expenses, including
52 attorney's fees, incurred for the motion.

53 (3) On the Court's Initiative. On its own, the court may order an attorney, law firm,
54 or party to show cause why conduct specifically described in the order has not violated
55 Rule 11(b).

56 (4) Nature of a Sanction. A sanction imposed under this rule must be limited to
57 what suffices to deter repetition of the conduct or comparable conduct by others similarly
58 situated. The sanction may include nonmonetary directives; an order to pay a penalty into
59 court; or, if imposed on motion and warranted for effective deterrence, an order directing
60 payment to the movant of part or all of the reasonable attorney's fees and other expenses
61 directly resulting from the violation.

62 (5) Limitations on Monetary Sanctions. The court must not impose a monetary
63 sanction:

64 (A) against a represented party for violating Rule 11(b)(2); or

65 (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before
66 voluntary dismissal or settlement of the claims made by or against the party that is, or

67 whose attorneys are, to be sanctioned.

68 (d) Inapplicability to Discovery. This rule does not apply to disclosures and
69 discovery requests, responses, objections, and motions under Rules 26 through 37.

70 (e) Limited Representation.

71 (1) Preparation of Pleadings. An attorney who complies with Rule 1.2 of the N.D.
72 Rules of Prof. Conduct, may prepare pleadings, briefs, and other documents to be filed
73 with the court by a self-represented party. The attorney's preparation of pleadings, briefs,
74 or other documents does not constitute an appearance by the attorney in the case and no
75 notice under Rule 11(e)(2) is required. Any filing prepared under this paragraph must be
76 signed by the party designated as "self-represented."

77 (2) Limited Appearance.

78 (A) In General. An attorney who complies with Rule 1.2 of the N.D. Rules of Prof.
79 Conduct, may make a "limited appearance" on behalf of an otherwise self-represented
80 party involved in a proceeding to which these rules apply.

81 (B) Notice. An attorney who makes a limited appearance on behalf of an otherwise
82 self-represented party must serve a notice of limited appearance on each party involved in
83 the matter. The notice must state precisely the scope of the limited appearance. An
84 attorney who seeks to act beyond the stated scope of the limited appearance must serve an
85 amended notice of limited appearance. Upon completion of the limited appearance, the
86 attorney must file and serve a "Certificate of Completion of Limited Appearance" as
87 required by N.D.R.Ct. 11.2(d).

88 (C) Filing. If the action is filed, the party who received assistance of an attorney on

89 a limited basis must file the notice of limited appearance with the court.

90 (3) Scope of Rule. The requirements of this rule apply to every pleading, written
91 motion and other paper signed by an attorney acting within the scope of a limited
92 representation.

93 EXPLANATORY NOTE

94 Rule 11 was amended, effective March 1, 1986; March 1, 1990; March 1, 1996;
95 March 1, 1997; August 1, 2001; March 1, 2009; March 1, 2011; March 1, 2014; August 1,
96 2016; March 1, 2018; September 15, 2019.

97 Rule 11 governs to the extent Rule 11 and N.D.R.Ct. 3.2, conflict.

98 Rule 11 was revised, effective March 1, 1996, in response to the 1993 revision of
99 Fed.R.Civ.P. 11. North Dakota's rule differs from the federal rule in the following
100 respects: 1) North Dakota's rule requires attorneys to cite their State Board of Law
101 Examiners identification number when signing papers; and 2) North Dakota's rule does
102 not require allegations or denials to be specifically identified when immediate evidentiary
103 support is lacking.

104 Subdivision (a) was amended, effective March 1, 2014, to specify that the e-mail
105 address required in documents signed by an attorney or party is the signer's e-mail address
106 for electronic service.

107 Subdivision (a) was amended, effective March 1, 2018, to state that notarization is
108 not generally required for documents filed in civil actions and to provide a method for
109 using unsworn statements made under a penalty of perjury.

110 Subdivision (a) was amended, effective September 15, 2019, to remove language

111 specifying the form of an unsworn declaration. N.D.C.C. § 31-15-05 provides the
112 required form for an unsworn declaration.

113 Subdivision (e) was added, effective March 1, 2009, to permit an attorney to file a
114 notice of limited representation indicating an intent to represent a party for one or more
115 matters in a case, but not for all matters. An attorney must also serve a notice of
116 termination of limited representation when the attorney's involvement ends. Rule 5, Rule
117 11 and N.D.R.Ct. 11.2, were amended to permit attorneys to assist an otherwise
118 self-represented party on a limited basis without undertaking full representation of the
119 party. Under N.D.R. Prof. Conduct 1.2 (c) a lawyer may limit the scope of the
120 representation if a client consents after consultation.

121 Subdivision (e) was amended, effective August 1, 2016, to add new paragraphs (1)
122 and (2) providing additional details on the services an attorney may perform while
123 assisting a self-represented party on a limited basis and indicating when notice of these
124 services must be provided to other parties and the court. The new paragraphs are based on
125 language from Neb. R. Prof. Conduct 3-501.2.

126 Rule 11 was amended, effective March 1, 2011, in response to the December 1,
127 2007, revision of the Federal Rules of Civil Procedure. The language and organization of
128 the rule were changed to make the rule more easily understood and to make style and
129 terminology consistent throughout the rules.

130 SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 8-10;
131 September 29-30, 2016, pages 20-22; September 24-25, 2015, pages 2-11; April 23-24,
132 2015, pages 16-25; January 29-30, 2015, page 22; April 25-26, 2013, page 16; September

133 24-25, 2009, pages 13-14; January 24, 2008, pages 2-7; October 11-12, 2007, pages
134 20-26; September 28-29, 1995, pages 2-3; April 27-28, 1995, pages 3-4; January 26-27,
135 1995, pages 8-10; September 29-30, 1994, pages 24-26; April 20, 1989, page 2;
136 December 3, 1987, page 11; April 26, 1984, pages 25-26; January 20, 1984, pages 16-18;
137 September 20-21, 1979, page 7; Fed.R.Civ.P. 11.

138 STATUTES AFFECTED:

139 CONSIDERED: N.D.C.C. ch. 31-15.

140 CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other
141 Papers); N.D.R.Ct. 11.1 (Nonresident Attorneys); N.D.R.Ct. 11.2 (Withdrawal of
142 Attorneys); N.D.R. Prof. Conduct 1.2 (Scope of Representation); N.D.C.C. §§ 28-26-01
143 (Attorney's Fees by Agreement-Exceptions-Awarding Costs and Attorney's Fees to
144 Prevailing Party), and 28-26-31 (Pleadings Not Made in Good Faith).

RULE 41. SEARCH AND SEIZURE

(a) In General

(1) Definition. A search warrant is an order in writing, made in the name of the state, signed by the magistrate, directed to a peace officer, commanding the peace officer to search for property, evidence or a person.

(2) Authority to Issue a Warrant. A state or federal magistrate acting within or for the territorial jurisdiction where the property, evidence or person sought is located, or from which it has been removed, may issue a search warrant authorized by this rule.

(b) Property, Evidence or Persons Subject to Search and Seizure. A warrant may be issued for any of the following:

(1) property that constitutes evidence of a crime;

(2) contraband, the fruits of crime, or things criminally possessed;

(3) property designed or intended for use, or which is or has been used as the means of, committing a crime;

(4) a person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuing the Warrant.

(1) Warrant on Affidavit or Sworn Recorded Testimony.

(A) In General. A warrant other than a warrant on oral testimony under Rule 41 (c)(2) may issue only when the grounds for issuing the warrant are established in:

(i) a written declaration ~~by a licensed peace officer~~ made and subscribed under

23 penalty of perjury, or

24 (ii) an affidavit or affidavits sworn to or sworn recorded testimony taken before a
25 state or federal magistrate.

26 (B) Examination. Before ruling on a request for a warrant, the magistrate may
27 require the licensed peace officer, affiant or other witnesses to appear personally and may
28 examine under oath the licensed peace officer, affiant and any witnesses the affiant may
29 produce. This examination must be recorded and made part of the proceedings.

30 (C) Probable Cause. If the state or federal magistrate is satisfied that grounds for
31 the application exist or that there is probable cause to believe they exist, the magistrate
32 must issue a warrant identifying the property, evidence or person to be seized and naming
33 or describing with particularity the person or place to be searched. The finding of
34 probable cause may be based upon hearsay evidence in whole or in part.

35 (D) Command to Search. The warrant must be directed to a peace officer
36 authorized to enforce or assist in enforcing any law of this state. It must command the
37 officer to search, within a specified period of time not to exceed ten days, the person or
38 place named for the property, evidence or person specified.

39 (E) Service and Return. The warrant must be served in the daytime, unless the
40 issuing authority, by appropriate provision in the warrant, and for reasonable cause
41 shown, authorizes its execution at times other than daytime. It may designate a state or
42 federal magistrate to whom it must be returned.

43 (2) Warrant by Telephonic or Other Reliable Electronic Means. In accordance with
44 Rule 4.1, the magistrate may issue a warrant based on information communicated by

45 telephone or other reliable electronic means.

46 (3) Warrant Seeking Electronically Stored Information. A warrant under Rule
47 41(c) may authorize the seizure of electronic storage media or the seizure or copying of
48 electronically stored information. Unless otherwise specified, the warrant authorizes a
49 later review of the media or information consistent with the warrant. The time for
50 executing the warrant refers to the seizure or on-site copying of the media or information,
51 and not to any later off-site copying or review.

52 (d) Execution and Return With Inventory.

53 (1) Execution. The person who executes the warrant must enter the date and time
54 of the execution on the face of the warrant.

55 (2) Inventory. An officer present during the execution of the warrant must prepare
56 and verify an inventory of any property or evidence seized. The officer must do so in the
57 presence of the applicant for the warrant and the person from whom, or from whose
58 premises, the property or evidence was taken. If either one is not present, the officer must
59 prepare and verify the inventory in the presence of at least one other credible person. In a
60 case involving the seizure of electronic storage media or the seizure or copying of
61 electronically stored information, the inventory may be limited to describing the physical
62 storage media that were seized or copied. The officer may retain a copy of the
63 electronically stored information that was seized or copied.

64 (3) Receipt. The officer taking property or evidence under the warrant must:

65 (A) give a copy of the warrant and a receipt for the property or evidence taken to
66 the person from whom or from whose premises the property or evidence was taken; or

67 (B) leave a copy of the warrant and receipt at the place from which the officer took
68 the property or evidence;

69 (C) preserve the property or evidence taken until the court directs its proper
70 disposition.

71 (4) Return. The officer executing the warrant must promptly return it—together
72 with a copy of the inventory—to the magistrate designated on the warrant. The officer
73 may do so by reliable electronic means. The magistrate on request must give a copy of the
74 inventory to the person from whom, or from whose premises, the property or evidence
75 was taken and to the applicant for the warrant.

76 (e) Motion for Return of Property or Evidence. A person aggrieved by an unlawful
77 search and seizure of property or evidence or by the deprivation of property may move the
78 trial court for the return of the property or evidence. The court must receive evidence on
79 any factual issue necessary to decide the motion. If it grants the motion, the court must
80 return the property or evidence to the moving party, although the court may impose
81 reasonable conditions to protect access and use of the property or evidence in later
82 proceedings. If a motion for return of property or evidence is made or heard after an
83 indictment, information, or complaint is filed, it must be treated also as a motion to
84 suppress under Rule 12.

85 (f) Motion to Suppress. A motion to suppress evidence may be made in the trial
86 court as provided in Rule 12.

87 (g) Return of Papers to Clerk. The magistrate to whom the warrant is returned must
88 attach to the warrant a copy of the return, inventory and all other related papers and must

89 file them with the clerk of the trial court.

90 (h) Scope and Definitions.

91 (1) Scope. This rule does not modify any statute regulating search or seizure, or the
92 issuance and execution of a search warrant in special circumstances.

93 (2) Definitions. The following definitions apply under this rule:

94 (A) "Property" includes documents, books, papers and any other tangible objects.

95 (B) "Daytime" means the hours from 6:00 a.m. to 10:00 p.m. according to local
96 time.

97 EXPLANATORY NOTE

98 Rule 41 was amended, effective September 1, 1983; March 1, 1990; March 1,
99 1992 January 1, 1995; March 1, 2006; March 1, 2011; March 1, 2012; March 1, 2013;
100 December 15, 2016; September 15, 2019.

101 Rule 41 is an adaptation of Fed.R.Crim.P. 41 and is designed to implement the
102 provisions of Article I, Section 8, of the North Dakota Constitution and the Fourth
103 Amendment to the United States Constitution, which guarantee, "The right of the people
104 to be secure in their persons, houses, papers and effects against unreasonable searches and
105 seizures shall not be violated; and no warrant shall issue but upon probable cause,
106 supported by oath or affirmation, particularly describing the place to be searched and the
107 persons and things to be seized." To implement this constitutional protection, an illegal
108 search and seizure will bar the use of such evidence in a criminal prosecution. The
109 suppression sanction is imposed in order to discourage abuses of power by law
110 enforcement officials in conducting searches and seizures.

111 Subdivision (a) provides that a search warrant be issued by a magistrate, either
112 state or federal, acting within or for the territorial jurisdiction. The provision which
113 permits a federal magistrate to issue a search warrant is the reciprocal of the federal rule,
114 which permits a state magistrate to issue a search warrant pursuant to a federal matter. It
115 is contemplated that a search warrant will be issued by a federal magistrate only on the
116 nonavailability of a state magistrate.

117 Subdivision (a) does not require that the individual requesting the search warrant
118 be a law enforcement officer. There appears to be common-law support for the use of the
119 search warrant as a means of getting an owner's property back. The primary purpose of
120 the rule, however, is the authorization of a search in the interest of law enforcement and
121 as a practical matter the request for issuance of a search warrant by someone other than a
122 law enforcement officer is virtually nonexistent.

123 Subdivision (a) was amended, effective December 15, 2016, to add language
124 defining a search warrant.

125 Subdivision (b) describes the property, evidence or persons which may be seized
126 with a lawfully issued search warrant. Issuance of a search warrant to search for items of
127 solely evidential value is authorized. There is no intention to limit the protection of the
128 Fifth Amendment against compulsory self-incrimination, so items that are solely
129 "testimonial" or "communicative" in nature might well be inadmissible on those grounds.

130 Paragraph (c)(1) follows the federal rule except that North Dakota's rule permits
131 the issuance of a warrant on sworn recorded testimony without an affidavit. Probable
132 cause for the issuance of a search warrant should be assessed under the

133 totality-of-circumstances test.

134 Paragraph (c)(1) was amended, effective December 15, 2016, to allow grounds for
135 issuance of a search warrant to be established in a written declaration by a licensed peace
136 officer made and subscribed under penalty of perjury. This amendment facilitates
137 submission of electronic documents to establish the grounds for search warrants. Any
138 electronic signature on a document submitted under this rule by a licensed peace officer is
139 considered to be that of the officer.

140 Paragraph (c)(1) was amended, effective September 15, 2019, to remove language
141 limiting the use of unsworn declarations to peace officers. N.D.C.C. ch. 31-15 allows
142 anyone to make an unsworn declaration that has the same effect as a sworn declaration.
143 N.D.C.C. § 31-15-05 provides the required form for an unsworn declaration.

144 The provision for examination of the affiant before the magistrate is intended to
145 assure the magistrate an opportunity to make a careful decision as to whether there is
146 probable cause based on legally obtained evidence. The requirement that the testimony be
147 recorded is to insure an adequate basis for determining the sufficiency of the evidentiary
148 grounds for the issuance of the search warrant if a motion to suppress is later filed.

149 The language of subparagraph (c)(1)(E), "for reasonable cause shown," is intended
150 to explain the necessity for executing the warrant at a time other than the daytime. This
151 provision is intended to be a substantive prerequisite to the issuance of a warrant that is to
152 be executed at a time other than daytime, although it is not necessary that the quoted
153 language ("for reasonable cause shown") be defined in subdivision (h).

154 Former paragraphs (c)(2) and (c)(3) were deleted and a new paragraph (c)(2) was

155 added, effective March 1, 2013, to allow the magistrate to issue a warrant based on
156 information communicated by telephone or other reliable electronic means under the
157 procedure set out in Rule 4.1.

158 Paragraph (c)(3) was added and paragraph (d)(1) was amended, effective March 1,
159 2012, to provide guidelines for warrants authorizing the seizure of electronic storage
160 media and electronically stored information and for the inventory of seized electronic
161 material. The amendments were based on the December 1, 2009, amendments to
162 Fed.R.Crim.P. 41.

163 Subdivision (d) is intended to make clear that a copy of the warrant and an
164 inventory receipt for property or evidence taken shall be left at the premises at the time of
165 the lawful search or with the person from whose premises the property is taken if he is
166 present.

167 Paragraph (d)(3) was amended, effective December 15, 2016, to require the officer
168 taking property or evidence under a warrant to preserve it until the court directs its
169 disposition.

170 Paragraph (d)(4) was amended, effective March 1, 2013, to allow an officer to
171 make a return by reliable electronic means.

172 Subdivision (e) requires that the motion for return of property or evidence be made
173 in the trial court rather than in a preliminary hearing before the magistrate who issued the
174 warrant. It further provides for a return of the property or evidence if: (1) the person is
175 entitled to lawful possession, and (2) the seizure is illegal. However, property or evidence
176 which is considered contraband does not have to be returned even if seized illegally. The

177 last sentence of subdivision (e) provides that a motion for return of property or evidence,
178 made in the trial court, shall be treated as a motion to suppress under N.D.R.Crim.P. 12.
179 The purpose of this provision is to have a series of pretrial motions disposed of in a single
180 appearance, such as at a Rule 17.1 (Omnibus Hearing), rather than in a series of pretrial
181 motions made on different dates causing undue delay in administration.

182 Subdivisions (a), (b), and (c) were amended in 1983, effective September 1, 1983,
183 to add persons as permissible objects of search warrants. These amendments follow 1979
184 amendments to Fed.R.Crim.P. 41 and are intended to make it possible for a search
185 warrant to issue to search for a person if there is probable cause to arrest that person; or
186 that person is being unlawfully restrained.

187 Subdivisions (c) and (d) were amended, effective March 1, 1990. The amendments
188 are technical in nature and no substantive change is intended.

189 Subdivision (e) was amended, effective March 1, 1992, to track the federal rule.

190 Rule 41 was amended, effective March 1, 2006, in response to the December 1,
191 2002, revision of the Federal Rules of Criminal Procedure. The language and organization
192 of the rule were changed to make the rule more easily understood and to make style and
193 terminology consistent throughout the rules.

194 SOURCES: Joint Procedure Committee Minutes of April 26, 2019, pages 8-10;
195 September 29-30, 2016, pages 2-5; January 26-27, 2012, pages 26-27; April 28-29, 2011,
196 page 17; September 23-24, 2010, page 32; April 29-30, 2010, page 20, 25-26; April
197 28-29, 2005, pages 5-8; January 27-27, 2005, pages 33-34; April 28-29, 1994, pages
198 22-23; November 7-8, 1991, page 4; October 25-26, 1990, pages 15-16; April 20, 1989,

199 page 4;December 3, 1987, page 15; October 15-16, 1981, pages 12-15; December 7-8,
200 1978, pages 23-26; October 12-13, 1978, pages 15-19; April 24-26, 1973, page 14;
201 December 11-15, 1972, pages 31-37; November 18-20, 1971, pages 3-9; September
202 16-18, 1971, pages 11-32; March 12-13, 1970, page 3; November 20-21, 1969, pages
203 19-24; May 15-16, 1969, pages 21-23; Fed.R.Crim.P. 41.

204 STATUTES AFFECTED:

205 SUPERSEDED: N.D.C.C. §§ 29-29-01, 29-29-02, 29-29-03, 29-29-04, 29-29-05,
206 29-29-06, 29-29-07, 29-29-10, 29-29-11, 29-29-12, 29-29-13, 29-29-14, 29-29-15,
207 29-29-16, 29-29-17.

208 CONSIDERED: N.D.C.C. ch. 31-15; N.D.C.C. §§ 12-01-04(12), 12-01-04(13),
209 29-01-14(3), 29-29-08, 29-29-09, 29-29-18, 29-29-19, 29-29-20, 29-29-21, 31-04-02.
210 N.D.C.C. ch. 28-29.1. N.D.C.C. ch.19-03.1.

211 CROSS REFERENCE: N.D.R.Crim.P. 4.1 (Complaint, Warrant, or Summons by
212 Telephone or Other Reliable Electronic Means); N.D.R.Crim.P. 12 (Pleadings and
213 Pretrial Motions); N.D.R.Crim.P. 17.1 (Omnibus Hearing and Pretrial Conference);
214 N.D.R.Ct. 2.2(Facsimile Transmission); N.D. Sup. Ct. Admin. R. 52 (Interactive
215 Television).