

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20200229

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

[¶1] On August 27, 2020, the Joint Procedure Committee submitted proposed amendments to the North Dakota Rules of Civil Procedure, North Dakota Rules of Criminal Procedure, North Dakota Rules of Evidence, North Dakota Rules of Appellate Procedure, North Dakota Rules of Court, North Dakota Supreme Court Administrative Rules, and North Dakota Rules of Juvenile Procedure. On July 7, 2021, following a comment period, amendments to N.D.R.Ct. 3.2 were adopted. The Court considered amendments to the explanatory notes for N.D.R.Ct. 3.2. The proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20200229>. 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 ORDERED** that the proposed explanatory notes for North Dakota Rule of Court 3.2 are ADOPTED effective immediately.

[¶3] The Supreme Court of the State of North Dakota convened this 4th day of August 2021, with the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

/s/ Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

RULE 3.2 MOTIONS

EXPLANATORY NOTE

Rule 3.2 was amended, effective September 1, 1983; March 1, 1986; January 1, 1988; March 1, 1990; January 1, 1995; March 1, 1997; March 1, 2002; March 1, 2005; March 1, 2007; March 1, 2011; March 1, 2016; August 1, 2021.

Subdivision (a) was amended, effective March 1, 1990, to provide that the request for oral argument on the motion must be granted when the party requesting oral argument has timely served and filed a brief.

Subdivision (a) was amended, effective January 1, 1995, to provide that a written motion must be noticed, and that the notice must indicate that oral argument has been requested or that the motion will be decided on briefs unless oral argument is requested. In addition, the amendment shortened the time between the date a motion is filed and the date a motion may be heard by eliminating the five-day period within which the moving party's brief could be filed. Although the rule contemplates filing a brief with every motion, what constitutes a brief should be liberally construed.

Subdivision (a) was amended, effective August 1, 2021, to require the notice to specify whether the hearing will be for presenting evidence, oral argument, or both.

Paragraph (a)(2) was amended, effective March 1, 2011, to increase the time for an opposing party to serve and file an answer brief from 10 to 14 days after service of the

22 moving party's brief. The time for a moving party to serve and file a reply brief was
23 increased from five to seven days after expiration of the time for filing the answer brief.

24 Paragraph (a)(3) was amended to increase the time to request oral argument from
25 five to seven days after expiration of the time for filing the answer brief.

26 Paragraph (a)(3) was amended, effective March 1, 2016, to require a party
27 requesting oral argument to secure a time for the argument within 14 days of the request.
28 Otherwise, the request will be waived and the matter considered on the briefs. In addition,
29 language was added to the rule requiring 21 days notice to be given if an evidentiary
30 hearing is requested in a civil action.

31 Paragraph (a)(4) was added, effective August 1, 2021, to provide a procedure for
32 self-represented prisoners to use when requesting a hearing.

33 Subdivision (b) was amended, effective March 1, 2007, to expand hearing options
34 to include hearing by interactive television and to add a requirement that the court review
35 the parties' submissions before it orders oral argument or testimony.

36 Subdivision (b) was amended, March 1, 2016, to allow hearings to be conducted
37 using contemporaneous audio or audiovisual transmission by reliable electronic means.
38 N.D. Sup. Ct. Admin. R. 52 governs electronic means hearings.

39 Paragraph (f)(1) was added, effective March 1, 1997, to clarify that, in the case of
40 a conflict between this rule and any other supreme court rule, the other rule will govern.
41 For example, N.D.R.Civ.P. 56 allows parties 30 days to respond to a summary judgment
42 motion, which conflicts with the 14 day response period specified in subdivision (a) of

43 this rule. Under subdivision (e), the N.D.R.Civ.P. 56 response period would prevail.

44 Paragraph (f)(2) was added, effective March 1, 2007, to specify that this rule
45 applies to formal proceedings under the Uniform Probate Code. N.D.C.C. §
46 30.1-01-06(19) defines “formal proceedings” as “proceedings conducted before a judge
47 with notice to interested persons.”

48 SOURCES: Joint Procedure Committee Minutes of January 28, 2021, pages 13-17;
49 April 24, 2020, pages 3-4; January 30, 2020, pages 13-24; September 26, 2019, pages 16-
50 19; April 26, 2019, pages 27-28; April 23-24, 2015, page 6; January 29-30, 2015, pages
51 19-21; April 29-30, 2010, page 21; April 27-28, 2006, pages 7-9, 17-19; January 26,
52 2006, pages 12-13; April 29-20, 2004, pages 25-26; September 28-29, 2000, page 13;
53 April 25, 1996, pages 8-11; January 25-6, 1996, pages 10-16; April 28-29, 1994, pages
54 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 13-16; April
55 29-30, 1993, pages 20-22; April 20, 1989, pages 10-15; March 24-25, 1988, pages 7-10
56 and 13-15; December 3, 1987, pages 4-5; February 19-20, 1987, pages 21-22; June 22,
57 1984, page 30; April 26, 1984, pages 17-19.

58 STATUTES AFFECTED:

59 CONSIDERED: N.D.C.C. ch. 30.1.

60 CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other
61 Papers); N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 7 (Pleadings Allowed--Form of Motions);
62 N.D.R.Civ.P. 56 (Summary Judgment); N.D.R.Crim.P. 45 (Time); N.D.R.Crim.P. 47
63 (Motions); N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.App.P. 27 (Motions);

64 N.D.R.App.P. 34 (Oral Argument); N.D. Sup. Ct. Admin. R. 52 (Contemporaneous
65 Transmission by Reliable Electronic Means).