

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION AND NOTICE OF COMMENT

Supreme Court No. 20210174

**Amendments to North Dakota Rules of Juvenile Procedure
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11.1, 12, 13, 15, 16, 17, 18, 19**

[¶1] On June 11, 2021, the Juvenile Policy Board submitted proposed amendments to North Dakota Rules of Juvenile Procedure 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11.1, 12, 13, 15, 16, 17, 18, 19. The Board proposed amendments to N.D.R.Juv.P. 1, 3, 6, 7, 8, 9, 11, 11.1, 12, 13, 15, 16, 17, 18 and 19 to update terminology and statutory references consistent with new N.D.CC. chs. 27-20.2, 27-20.3, and 27-20.4. The Board proposed substantive amendments to N.D.R.Juv.P. 2, 4, 5, and 10. The proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20210174>. 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.

[¶2] N.D.R.Juv.P. 2 is addressed in a separate Notice of Comment entered June 23, 2021, in this matter.

[¶3] **IT IS HEREBY ORDERED**, that North Dakota Rules of Juvenile Procedure 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11.1, 12, 13, 15, 16, 17, 18, 19 are ADOPTED effective July 1, 2021, subject to a 30-day comment period.

[¶4] **IT IS FURTHER ORDERED**, any person wishing to comment on the proposal may do so by email to Petra H. Mandigo Hulm, Clerk of the Supreme Court, at supclerkofcourt@ndcourts.gov or in writing addressed to 600 E. Boulevard Ave., Bismarck, ND 58505-0530, no later than July 23, 2021.

[¶5] The Supreme Court of the State of North Dakota convened this 23rd day of June, 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 1. SCOPE AND PURPOSE

These rules govern the procedure in all actions conducted under the Uniform Juvenile Court Act, N.D.C.C. ~~ch. 27-20~~ chs. 27-20.2, 27- 20.3, and 27-20.4, and under N.D.C.C. ch 27-20.1 on guardianship of a child. They must be construed and administered to protect the best interests of children and to address the unique characteristics and needs of children.

EXPLANATORY NOTE

Rule 1 was adopted effective March 1, 2010, amended effective March 1, 2021;_____.

Rule 1 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. chs. ~~27-20~~, 27-20.1, 27-20.2, 27- 20.3, 27-20.4.

CROSS REFERENCE: N.D.R.Ev. 1101 (Applicability of Rules); N.D.R.Ct. 1.1 (Scope); N.D.R.Civ.P. 1 (Scope of Rules), N.D.R.Civ.P. 81 (Applicability in General); N.D.R.Crim.P. 1 (Scope and Exceptions).

audiovisual transmission by reliable electronic means. The standards in N.D. Sup. Ct. Admin. R. 52 apply when reliable electronic means are used.

Rule 2 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021, page _____; January 26, 2021, pages _____; July 31, 2019, page 1; June 21, 2019, pages 1-2; April 12, 2019, pages 1-2; March 22, 2019 pages 4-5; September 5, 2014, page 2; February 20, 2009; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 26, 2019, pages 10-12; January 29-30, 2015, pages 6-7; September 25-26, 2014, pages 4-5.

STATUTES AFFECTED:

~~SUPERSEDED: N.D.C.C. § 27-20-22.~~

CONSIDERED: N.D.C.C. §§ ~~27-20-14; 27-20-15; 27-20-16; 27-20-17~~ 27-20.1-08; 27-20.4-06; 27-20.4-07; 27-20.4-08; 27-20.4-09; 27-20.3-16.

CROSS REFERENCE: N.D.R.Juv.P. 9 (Continuance); Unified Judicial System Policy 409 (Juvenile Court Time Standards); N.D. Sup. Ct. Admin. R. 52 (Contemporaneous Transmission by Reliable Electronic Means).

RULE 3. CONTENTS OF PETITION

(a) Petition. The petition must be verified and may be on information and belief. It must include:

(1) the facts that bring the child within the jurisdiction of the court;

(2) the name, age, and residence address of the child on whose behalf the petition is brought;

(3) the names and residence addresses, if known to petitioner, of the parties, except that the names and residence addresses of the parents, guardian, or custodian of the child may not be included in the petition in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16;

(4) whether the child is in custody and, if so, whether in ~~shelter~~ protective care or detention and the date and time the child was taken into custody; and

(5) a request for relief based on the facts alleged, stating that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency ~~or unruly conduct~~ is alleged, that the child may be in need of treatment or rehabilitation.

(b) Parties. Parties include the petitioner, the child, parents, guardian, or custodian of the child, if any, and any person that the court allows to intervene as a party. If the child's parents, guardian, or custodian do not reside or cannot be found within the state, or if their places of residence are unknown, the name of any known adult relative residing within the county, or, if there be none, the known adult relative residing nearest to the

location of the court must be included in the petition.

(c) Juvenile Court Officer. Juvenile court officers may not act as the petitioner where the child is alleged to be delinquent, ~~unruly~~ child in need of protection, ~~deprived~~, or where termination of parental rights are involved.

EXPLANATORY NOTE

Rule 3 was adopted effective March 1, 2010; amended effective May 1, 2015;_____.

Subdivision (a) was amended, effective May 1, 2015, to clarify that the names and residence addresses of the parents, guardian, or custodian of the child are not included in the petition for a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16. Continued foster case matters involve children over the age of 18 who can legally act on their own behalf.

Subdivision (c) was added, effective May 1, 2015, to incorporate language from Policy 408 of the Unified Judicial System Policy Manual.

Rule 3 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014, page 3; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of January 29-30, 2015, page 8; September 25-26, 2014, page 6.

43 STATUTES AFFECTED:

44 ~~SUPERSEDED: N.D.C.C. § 27-20-21.~~

45 CONSIDERED: N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16.

RULE 4. INTERESTED PERSONS

Persons who may participate in a juvenile matter include:

(1) the parties as defined in Rule 3(b);

(2) the child's guardian ad litem;

(3) the victim to the extent required by N.D. Const. Art. I, § 25 in a delinquency case, if requested by the victim;

(4) in the case of an Indian child, and in accordance with N.D.C.C. § 27-20.2-15 and the Indian Child Welfare Act of 1978 [25 U.S.C. §§ 1901 through 1963], the child's Indian custodian and Indian tribe through the tribal representative;

(5) in the case of a foster child, the child's foster parents, pre-adoptive parents and relatives providing care for the child;

(6) any other person who is named by the court to be important to a resolution that is in the best interests of the child.

EXPLANATORY NOTE

Rule 4 was adopted effective March 1, 2010. Amended effective May 1, 2017;_____.

In these rules, the term “guardian ad litem” includes lay and attorney guardians ad litem.

Paragraph (3) was added, effective May 1, 2017, to allow a victim, on request, to take part in a delinquency case. “Victim” is defined in N.D. Const. Art. I, § 25(4).

Paragraph (4) was amended, effective _____, to reference N.D.C.C. § 27-20.2-15 and the Indian Child Welfare Act of 1978 [25 U.S.C. §§ 1901 through 1963].

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;

24 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
25 20, 2007. Joint Procedure Committee Minutes of January 26-27, 2017, pages 14-15; May 21-22,
26 2009.

27 STATUTES AFFECTED:

28 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 12.1-35; § 27-20.2-15.

29 CROSS REFERENCE: N.D.R.Juv.P. 3 (Contents of Petition).

RULE 5. SUMMONS

(a) Summons.

(1) Except in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16, the court must direct the issuance of a summons to the parents, guardian, or other custodian, guardian ad litem, and any other persons who are proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is ~~14 or more years of age or is alleged to be a delinquent, or unruly child~~ The summons must also be directed to the child if the child is 14 or more years of age and the subject of a child in need of protection petition or of a guardianship petition.

(2) A copy of the petition must accompany the summons unless the summons is served by publication, in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.

(3) Except in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16, the court may order the parents, guardian, or other custodian of the child to appear personally at the hearing and direct the person who has physical custody or control of the child to bring the child to the hearing. The order must include the address of the facility where the hearing will be held.

(4) In a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16, the court may order the child to appear personally.

22 (b) Immediate Custody Order. If it appears from a declaration filed or from sworn
23 testimony before the court that the conduct, condition, or surroundings of the child are
24 endangering the child's health or welfare or those of others, or that the child may leave or
25 be removed from the jurisdiction of the court or will not be brought before the court,
26 notwithstanding the service of the summons, the court may order a law enforcement
27 officer to serve the summons and take the child into immediate custody and bring the
28 child before the court.

29 (c) Right to Counsel. The summons must state that a party is entitled to counsel in
30 the proceedings.

31 (d) Waiver of Service. Except in a continued foster care matter under N.D.C.C. §
32 ~~27-20-30.1~~ 27-20.3-16, a party, other than the child, may waive service of summons by
33 written stipulation or by voluntary appearance at the hearing. If the child is present at the
34 hearing, the child's counsel, parent, guardian, or other custodian, or guardian ad litem,
35 may waive service of summons in the child's behalf. In a continued foster care matter
36 under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16, a child may waive service by written stipulation
37 or by voluntary appearance at the hearing.

38 (e) Hearing Without Parental Service. When a child is in detention or shelter care
39 and good cause is shown why service was not completed upon an absent or noncustodial
40 parent, the court may proceed with the hearing on the petition in order to comply with
41 statutory time limitations.

Rule 5 was adopted effective March 1, 2010; amended effective May 1, 2015;
March 1, 2021;_____.

In these rules, the term “guardian ad litem” includes lay and attorney guardians ad
litem.

Counsel may be provided at public expense for indigent parties under N.D.C.C. §
~~27-20-26~~ 27-20.2-12.

Subdivision (a) was amended, effective May 1, 2015, to clarify that issuance of a
summons and the child's presence at a hearing is not required in a continued foster care
matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16.

Paragraph (a)(1) was amended, effective _____, to require that a
summons be directed to the child if the child is 14 or more years of age and the subject of
a child in need of protection petition or of a guardianship petition.

Subdivision (d) was amended, effective May 1, 2015, to clarify that the child may
waive service in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16.
Continued foster case matters involve children over the age of 18 who can legally act on
their own behalf.

Rule 5 was amended, effective March 1, 2021, to delete the term “affidavit” and
replace it with “declaration.” This amendment was made in response to N.D.C.C. ch.
31-15, which allows anyone to make an unsworn declaration that has the same effect as a
sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
for an unsworn declaration.

Rule 5 was amended, effective _____, to update terminology and
statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014,
pages 3-4; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February
29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of
April 24, 2020, pages 4-5; January 29-30, 2015, page 8; September 25-26, 2014, page 6:
May 21-22, 2009.

STATUTES AFFECTED:

~~SUPERSEDED: N.D.C.C. § 27-20-22.~~

CONSIDERED: N.D.C.C. ch. 31-15, §§ ~~27-20-26, 27-20-30.1~~ 27-20.2-12; 27-
20.3-16.

RULE 6. SERVICE OF SUMMONS

(a) Personal Service.

(1) If a party to be served with a summons is within this state and can be found, the summons must be served on the party under Rule 4 of the North Dakota Rules of Civil Procedure at least twenty-four hours before the hearing.

(2) If the party is within this state and cannot be found, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by sending a copy by any form of mail or third-party commercial delivery addressed to the party and requiring a signed receipt and resulting in delivery to the party at least five days before the hearing.

(3) If the party is outside this state but can be found or the party's address is known, or the party's whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or sending a copy to the party by any form of mail or third-party commercial delivery addressed to the party and requiring a signed receipt and resulting in delivery to the party at least five days before the hearing.

(b) Service by Publication. If after reasonable effort the party cannot be found or the party's post-office address ascertained, whether the party is within or without this state, the court may order service of the summons upon the party by publication:

(1) in a newspaper under Rule 4(e) of the North Dakota Rules of Civil Procedure; or

(2) on a website designated by the court for that purpose:

(A) the summons must be posted on the website for three consecutive weeks;

(B) proof of posting on the website must be made by certification attaching a copy of the posted summons and the dates of posting;

The hearing must not be earlier than five days after the date of the last publication in a newspaper or on the website.

(c) Server Qualifications. Service of the summons may be made by any suitable person under the direction of the court.

(d) Payment of Costs. The court may authorize the payment from state funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

EXPLANATORY NOTE

Rule 6 was adopted effective March 1, 2010; amended effective October 1, 2019; explanatory note amended effective _____.

Subdivision (b) was amended, effective October 1, 2019, to allow service by publication on a website designated by the court.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; July 31, 2019, page 1; June 21, 2019, page 2; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 26, 2019, pages 12-14.

STATUTES AFFECTED:

~~SUPERSEDED: N.D.C.C. § 27-20-23.~~

CONSIDERED: N.D.C.C. §§ 27-20.3-12; 27-20.4-13.

CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction--Process--Service).

RULE 7. SERVICE AFTER SUMMONS

(a) In General. After the original summons has been served and jurisdiction has been established, service of papers in a juvenile proceeding may be made under this rule.

(b) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(c) Means of Service. A paper is served under this rule by:

(1) handing it to the person;

(2) leaving it:

(A) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

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

(3) mailing it to the person's last known address - in which event service is complete upon mailing;

(4) if no address is known, and on order of the court, leaving it with the clerk of the court;

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

(6) delivering it by any other means that the person consented to in writing - in which event service is complete when the person making service delivers it to the agent designated to make delivery.

EXPLANATORY NOTE

24 Rule 7 was adopted effective March 1, 2010; explanatory note amended
25 effective_____.

26 ~~Administrative Order 16~~ N.D.R.Ct. 3.5 governs service by electronic means.

27 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;
28 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
29 20, 2007.

30 CROSS REFERENCE: ~~N.D.Sup.Ct.Admin.Order 16 (Electronic Filing Pilot Project for~~
31 ~~the District Courts)~~ N.D.R.Ct. 3.5 (Electronic Filing in the District Courts).

RULE 8. PROVISIONAL HEARING

(a) Hearing Requirements. If service of summons on a party is being or will be made by publication, the court may conduct a provisional hearing on the allegations of the petition and enter an interlocutory order of disposition if:

(1) The petition alleges delinquency, ~~unruly conduct, or deprivation of the child~~ or that a child is in need of protection or requests that a guardian be appointed;

(2) The summons served on any party:

(A) states that prior to the final hearing on the petition designated in the summons a provisional hearing will be held at a specified time and place;

(B) requires any party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing;

(C) states further that findings of fact and orders of disposition made at the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

(D) otherwise conforms to Rule 5;

(3) A child who is of sufficient age and understanding to comprehend the proceedings is personally before the court for the provisional hearing.

(b) Interlocutory Order. All rules and statutory provisions applicable to a hearing on a petition, to orders of disposition, and to other proceedings apply under this rule, but findings of fact and orders of disposition have only interlocutory effect pending the final hearing on the petition. The rights and duties of the party served, who is being served, or who will be served by publication are not affected except as provided in Rule 8(c).

(c) Final Hearing. If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made become final without further evidence. If the party appears at the final hearing, the findings and orders of the provisional hearing must be vacated and disregarded and the hearing must proceed on the allegations of the petition, unless otherwise agreed to by the party who had been served by publication.

EXPLANATORY NOTE

Rule 8 was adopted effective March 1, 2010; amended effective_____.

Rule 1 was amended, effective_____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007.

~~STATUTES AFFECTED:~~

~~SUPERSEDED: N.D.C.C. § 27-20-25.~~

CROSS REFERENCE: N.D.R.Juv.P. 5 (Summons).

RULE 9. CONTINUANCE

(a) Granting Continuance.

(1) In General. On motion of a party or on the court's own motion, the court may continue a scheduled proceeding, hearing or adjudication to a later date so long as time requirements for resolution of the matter are not unduly delayed.

(2) Findings Required. Before granting a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

(3) Notice. The court must, either in writing or orally on the record, provide notice to the parties of the date and time of the continued proceeding.

(b) Adjudication or Disposition. The court must make specific findings that the continuance or adjournment is in the best interests of the child or that other good cause for continuance has been shown.

(c) Existing Orders. Unless otherwise ordered, existing orders remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders that are in the best interests of the child.

EXPLANATORY NOTE

Rule 9 was adopted effective March 1, 2010; amended effective October 1, 2019; the explanatory note was amended effective _____.

The good cause standard in paragraph (a)(2) and subdivision (b) applies when a situation occurs that is not within the control of the party seeking the continuance. It does not apply when

24 there is fault, excusable or otherwise, on the part of the party seeking the continuance.

25 Subdivision (a) was amended, effective October 1, 2019, to allow a continuance to be
26 granted on motion of a party or on the court's own motion.

27 Subdivision (b) was amended, effective October 1, 2019, to allow continuance of an
28 adjudication or disposition hearing when good cause is shown.

29 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; July 31, 2019, page 1;
30 June 21, 2019, page 1; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008;
31 February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of
32 April 26, 2019, pages 10-12.

33 ~~STATUTES AFFECTED:~~

34 CROSS REFERENCE: N.D.R.Juv.P. 14 (Motions); Unified Judicial System Policy 409
35 (Juvenile Court Time Standards).

RULE 10. PRESENCE, DEFAULT

(a) Presence.

(1) Child. The child has the right to be present at all delinquency, ~~unruly child~~ and continued foster care hearings. If the child is of sufficient age and competence, a child has the right to be present at all child in need of protection proceedings. The court may allow the child to be present at other hearings. The child waives the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings.

(2) Counsel. If the child has counsel, counsel must be present at all hearings. Counsel for the state must be present or available for all hearings unless excused by the court.

(3) Parent, Guardian or Custodian. Except in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16, the parent, guardian or custodian of a child must be present at all hearings unless excused by the court. If such person fails to attend a hearing with the child without excuse, the court may order a law enforcement officer to take the person into custody and bring the person before the court. The court may hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, guardian, or custodian fails to appear.

(b) Default.

(1) If after being properly served with a summons or notice a parent, guardian or custodian fails to appear at a hearing, the court may receive evidence in support of the petition or reschedule the hearing.

(2) If the petition is proved by the applicable burden of proof, the court may enter an

24 order granting the relief sought in the petition.

25 (c) Presence by Reliable Electronic Means. Presence permitted by contemporaneous
26 audio or audiovisual transmission by reliable electronic means is presence for the purposes of
27 this rule.

28 EXPLANATORY NOTE

29 Rule 10 was adopted effective March 1, 2010; amended effective May 1,
30 2015;_____.

31 Subdivision (a) was amended, effective May 1, 2015, to clarify that the child has the right
32 to be present at hearings in continued foster care matters under N.D.C.C. § ~~27-20-30.1~~ 27-20.3-
33 16, but the parents, guardian, or custodian of the child are not required to appear at these
34 hearings. Continued foster care matters involve children over the age of 18 who can legally act
35 on their own behalf.

36 Paragraph (a)(1) was amended, effective _____, to clarify that, if a child is
37 of sufficient age and competence, a child has the right to be present at all child in need of
38 protection proceedings.

39 Subdivision (c) was added, effective May 1, 2015, to allow any person to be present by
40 contemporaneous audio or audiovisual transmission using reliable electronic means if the court
41 permits. Any appearance by electronic means must be consistent with the standards set by N.D.
42 Sup. Ct. Admin. R. 52, which governs the use of contemporaneous transmission by reliable
43 electronic means in court proceedings.

44 Rule 10 was amended, effective _____, to update terminology and
45 statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
46 Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014,
page 4; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008;
September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of January 29-30,
2015, page 7; September 25-26, 2014, pages 6-12.

STATUTES AFFECTED:

~~SUPERSEDED: N.D.C.C. § 27-20-22.~~

CONSIDERED: N.D.C.C. § ~~27-20-30.1~~ 27-20.3-16.

CROSS REFERENCE: N.D. Sup. Ct. Admin. R. 52 (Contemporaneous Transmission by
Reliable Electronic Means).

RULE 11. NOTICE OF ALIBI DEFENSE

(a) Notice by Child. A child alleged to be delinquent ~~or unruly~~ who intends to offer an alibi defense must serve written notice on the state of any intended alibi defense within the time designated in the scheduling order for making motions or afterward as the court directs. The notice must state:

(1) each specific place where the child claims to have been at the time of the alleged delinquent ~~or unruly act~~; and

(2) the name, address, and telephone number, if any, of each witness on whom the child intends to rely.

(b) Notice by State.

(1) Disclosure. If the child serves a notice of alibi, the state must disclose in writing to the child or the child's attorney:

(A) the name, address, and telephone number, if any, of each witness the state intends to rely on to establish the child's presence at the scene of the alleged delinquent ~~or unruly act~~; and

(B) each state rebuttal witness to the child's alibi defense.

(2) Time to Disclose. Unless the court directs otherwise, the state must give its disclosure within 10 days after the child serves notice of an intended alibi defense.

(c) Continuing Duty to Disclose. Both the child and the state must promptly disclose in writing to the other party the name, address, and telephone number, if any, of each additional witness if:

(1) the disclosing party learns of the witness before or during the adjudication; and

(2) the witness should have been disclosed if the disclosing party had known of the

witness earlier.

(d) Exceptions. For good cause, the court may grant an exception to any requirement of this rule.

(e) Failure to Comply. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the child's alibi. This rule does not limit the child's right to testify.

(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely on an alibi, later withdrawn, or of a statement made in connection with that intention, is not admissible in any proceeding against the person who gave notice of the intention.

EXPLANATORY NOTE

Rule 11 was adopted effective March 1, 2010; amended effective _____.

Rule 11 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007.

RULE 11.1. CHILD COMPETENCY TO PROCEED; NOTICE OF DEFENSE BASED ON
MENTAL CONDITION; MENTAL EXAMINATION

(a) Proceeding when Child is Believed to be Incompetent.

(1) Authority to Order Evaluation of Child Competence. Any time after a petition is filed and before the final disposition of a case, if doubt arises as to the competence of a child, the juvenile court must suspend the case until the question of competence is determined. The court may order the child to submit to an examination by one or more mental health professionals retained by the state to determine competency. A child is incompetent and may not be permitted to admit to a delinquent ~~or unruly~~ offense, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) appreciate the allegations against the child;

(B) appreciate the range and nature of possible dispositions that may be imposed in the proceedings against the child;

(C) understand the nature of the juvenile court process;

(D) disclose to counsel facts pertinent to the proceedings at issue;

(E) display appropriate courtroom behavior; or

(F) testify relevantly.

(2) Counsel. Any child subject to competency proceedings must be represented by counsel.

(3) Proceedings. The state's attorney, the child's counsel or the court may bring a motion to determine the competency of the child. The motion must set forth the facts constituting the basis for the motion but the child's counsel may not divulge communications in violation of the

24 attorney-client privilege. The bringing of the motion by the child's counsel does not waive the
25 attorney-client privilege. Any such motion may be brought over the objection of the child.

26 (4) Report of Examination. Within 30 days, the examiner must file a written report with
27 the court, and the court must provide a copy to the state's attorney and child's counsel. The report
28 contents may not be otherwise disclosed until the hearing on the child's competency. The report
29 must include:

30 (A) a description of the procedures, techniques and tests used in the evaluation of the
31 child and the purposes of each;

32 (B) any clinical observations, findings and opinions of the examiner on each issue
33 referred by the court for evaluation;

34 (C) any recommended treatment or education for the child to attain competence;

35 (D) an assessment of the likelihood that the child will attain competence under the
36 recommended treatment or education;

37 (E) an assessment of the probable duration of the treatment or education required to attain
38 competence;

39 (F) consideration of whether the child is a danger to himself, herself or society;

40 (G) if the examiner recommends treatment for the child to attain competence, a
41 recommendation as to whether services can best be provided to the child as an outpatient or
42 inpatient, or by commitment to an institution for persons with intellectual disabilities or mental
43 illness.

44 (5) Hearing and Determination of Competency. Upon receipt of the report of examination
45 and notice to the parties, the court must hold a hearing within 10 days to review the report with
46 the parties. If either party objects to the report's conclusion regarding the child's competency to

47 proceed, the court must hold a hearing within 10 days on the issue of the child's competency to
48 proceed.

49 (A) Finding of Competency. If the court determines that the child is competent by the
50 greater weight of evidence, the court must enter a written order finding competency and the
51 proceedings against the child must resume.

52 (B) Findings of Incompetency. Immediately upon a finding of incompetency of the child,
53 the court must determine whether:

54 (i) the child is danger to himself, herself or society;

55 (ii) providing services to the child will assist the child is attaining competence;

56 (iii) any services provided to the child can best be provided as an outpatient or inpatient,
57 by commitment to an institution for persons with intellectual disabilities or mental illness or as
58 otherwise allowed by law.

59 (6) Dismissal of Delinquency Proceedings. The court has the discretion to:

60 (A) Dismiss the delinquency proceedings against the child and order the release of the
61 child to the child's parent(s), guardian or legal custodian upon conditions considered appropriate
62 by the court.

63 (B) Suspend the delinquency proceedings against the child for a period of up to one year
64 and order services be provided to the child as an outpatient or inpatient, by commitment to an
65 institution for persons with intellectual disabilities or mental illness.

66 (C) Dismiss the delinquency proceedings and direct that child ~~deprivation~~ in need of
67 protection proceedings be initiated.

68 (b) Notice of Defense Based on Lack of Responsibility. A child alleged to be delinquent
69 or unruly who intends to assert lack of responsibility by reason of mental disease or defect must

70 serve written notice on the state of any intended lack of responsibility defense within the time
71 designated in the scheduling order for making motions or afterward as the court directs. A child
72 who fails to do so cannot later claim lack of responsibility. The court may, for good cause, allow
73 a child to file the notice late, grant additional trial-preparation time, or make other appropriate
74 orders.

75 (1) Notice of Evidence of Mental Disease or Defect. If a child alleged to be delinquent or
76 unruly intends to introduce evidence relating to a mental disease or defect or any other mental
77 condition of the child bearing on the issue of whether the child had the mental state required for
78 the alleged delinquent or unruly act, the child must--within the time designated in the scheduling
79 order for making motions or afterward as the court directs--notify the state in writing of this
80 intention and file the notice. The court may, for good cause, allow the child to file the notice late,
81 grant the parties additional trial-preparation time, or make other appropriate orders.

82 (2) Failure to Comply. If the child fails to give notice under Rule 11.1(b) or does not
83 submit to an examination when ordered, the court may exclude any evidence from the child on
84 the issue of the child's mental disease, mental defect, or any other mental condition bearing on
85 the child's responsibility for the alleged delinquent or unruly act.

86 (3) Inadmissibility of Withdrawn Intention. Evidence of an intention of which notice was
87 given under Rule 11.1(a) or (b), later withdrawn, is not, in any proceeding, admissible against the
88 child who gave notice of the intention.

89 (c) Inadmissibility of a Child's Statements. No statement made by a child in the course of
90 any examination conducted under this rule (whether conducted with or without the child's
91 consent), no testimony based on the statement, and no other fruits of the statement may be
92 admitted in evidence against the child in any proceeding except on an issue regarding mental

condition on which the child has introduced evidence.

(d) Simultaneous Examinations. The court may order a competency examination under Rule 11.1(a), and an examination based on lack of responsibility under Rule 11.1(b) to all be conducted simultaneously.

EXPLANATORY NOTE

Rule 11.1 was adopted effective October 1, 2019; amended_____.

Rule 11.1 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; July 31, 2019, page 1-2; June 21, 2019, pages 2-3; March 22, 2019, page 2; December 7, 2018, page 2; September 14, 2018, page 3; March 23, 2018, pages 3-4; December 15, 2017, page 3. Joint Procedure Committee Minutes of April 26, 2019, pages 14-17.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. § ~~27-20-28~~ 27-20.4-15.

CROSS REFERENCE: N.D.R.Crim.P. 12.2 (Notice of Defense Based on Mental Condition; Mental Examination).

RULE 12. DISCOVERY

(a) Discovery in ~~Deprivation~~ Child in Need of Protection and Termination of Parental Rights Proceedings

(1) Request for Discovery. On written request, each party of whom discovery is requested must, to the extent not privileged or prohibited by statute, rule, or regulation, produce promptly for inspection, copying, or photographing the following information, documents, and material in that party's custody, control, or possession:

(A) the names and last known addresses of each witness to the occurrence that forms the basis of the allegation or defense;

(B) copies of any written statements made by any party or witness;

(C) transcriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel;

(D) any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;

(E) photographs and any physical evidence which a party intends to introduce at the hearing; and

(F) other evidence favorable to the requesting party and relevant to the subject matter involved in the pending action.

(2) Continuing Duty to Disclose. A party who discovers additional evidence or material must promptly disclose it to the other party or the court if:

(A) the evidence or material is subject to discovery or inspection under this rule; and

(B) the other party previously requested, or the court ordered, its production.

(3) Order Granting Discovery; Limitations; Sanctions.

(A) Motion to Compel. If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery must certify that a request for discovery has been made and refused.

(B) Reciprocal Discovery. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery.

(C) Limitations on Discovery. On its own or on a party's motion, the court may deny, limit, or set conditions on discovery if granting discovery may:

(i) jeopardize the safety of a party, witness, or confidential informant;

(ii) result in the production of perjured testimony or evidence;

(iii) endanger the existence of physical evidence; or

(iv) violate a privileged communication.

(D) Failure to Comply. If at any time during the course of the proceedings, a party brings to the attention of the court that a person has failed to comply with an order issued under this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material not disclosed, or enter an order appropriate under the circumstances.

(b) Discovery in Delinquency and ~~Unruly~~ Child Proceedings.

(1) Disclosure by Prosecution Without Order of Court. Upon a written request of the child's counsel, the prosecution must promptly disclose the following:

(A) Hearing Witnesses. The names and addresses of the persons the prosecution intends to call as witnesses at the hearing. The prosecution must permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the prosecution or agents of the

prosecution within the knowledge of the prosecution.

(B) Statements of Child and Accomplices. The prosecution must disclose and permit the child's counsel to inspect and copy any relevant written or recorded statements made by the child and accomplices within the possession or control of the prosecution, the existence of which is known by the prosecution, and must provide the child's counsel with the substance of any oral statements made by the child and accomplices that the prosecution intends to offer in evidence at the hearing.

(C) Documents and Tangible Objects. The prosecution must disclose and permit the child's counsel to inspect and copy books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies or portions of any of these items, if the item is within the prosecution's possession, custody, or control, and:

- (i) the item is material to preparing the child's defense;
- (ii) the prosecution intends to use the item in its case-in-chief at the hearing; or
- (iii) the item was obtained from or belongs to the child.

(D) Reports of Examinations and Tests. The prosecution must disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made that are relevant to the case.

(E) Record of the Child. The prosecution must inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of delinquency of the child within the possession or control of the prosecution.

(F) Special Education and School Disciplinary Records. The prosecution must disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration

in charging.

(G) Exculpatory Information. The prosecution must disclose to the child's counsel all evidence, known or that may become known to the prosecution, favorable to the child and material either to adjudication or disposition.

(H) Scope of the Prosecution's Obligations. The prosecution's obligations under this rule extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

(2) Disclosure by Prosecution on Order of Court. Upon motion of the child's counsel, the court at any time before the hearing may require the prosecution to disclose to the child's counsel any information requested that is relevant to guilt, innocence or culpability of the child. If the motion is denied, the court on application of the child must inspect and preserve any relevant information.

(3) Information Not Subject to Disclosure by Prosecution.

(A) Opinions, Theories or Conclusions. Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecution or members of the prosecution's staff or officials or agents of the prosecution participating in the matter are not subject to disclosure.

(B) Reports. Except as provided in subparagraphs (b)(1)(C) and (D), reports, memoranda or internal documents made by the prosecution or members of the prosecution's staff or by agents of the prosecution in connection with the matter are not subject to disclosure.

(4) Disclosure by Child Without Order of Court. Upon the prosecution's written request, the child's counsel must promptly disclose the following:

93 (A) Documents and Tangible Objects. The child's counsel must disclose and permit the
94 prosecution to inspect and copy books, papers, documents, photographs and tangible objects that
95 the child intends to introduce in evidence at the hearing.

96 (B) Reports of Examinations and Tests. The child's counsel must disclose and permit the
97 prosecution to inspect and copy any results or reports of physical or mental examinations,
98 scientific tests, experiments and comparisons made in connection with the particular matter if:

- 99 (i) the item is within the child's possession, custody, or control; and
100 (ii) the child intends to use the item in the child's case-in-chief at the hearing or intends to
101 call the witness who prepared the report and the report relates to the witness's testimony.

102 (5) Information Not Subject to Disclosure by Child.

103 (A) Opinions, Theories or Conclusions. Unless otherwise provided by these rules, any
104 legal research, records, correspondence, reports or memoranda to the extent that they contain the
105 opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or
106 counsel's agents participating in the representation of the child are not subject to disclosure.

107 (B) Reports. Except as provided by (4)(A) and (4)(B), reports, memoranda or internal
108 documents made by the child's counsel or members of counsel's staff, or counsel's agents in
109 connection with the defense of the matter against the child are not subject to disclosure.

110 (6) Regulation of Discovery.

111 (A) Continuing Duty to Disclose. If, after compliance with any discovery rule or order,
112 the prosecution or the child's counsel discovers additional material, information or witnesses
113 subject to disclosure, counsel must promptly notify the opposing side of the existence of the
114 additional material or information and the identity of the witnesses. The prosecution and the
115 child's counsel have a continuing duty at all times before and during the hearing to supply the

materials and information required by these rules.

(B) Time, Place and Manner of Discovery and Inspection. An order of the court permitting discovery must specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(C) Custody of Materials. Any materials furnished to the prosecution or the child's counsel under discovery rules or court orders must remain in the custody of the prosecution or the child's counsel and must be used only for the pending case and must be subject to such other terms and conditions as the court may prescribe.

(D) Protective Orders. Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the prosecution or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

(E) Excision. If only a portion of materials are discoverable under these rules, that portion must be disclosed. If material is excised pursuant to judicial order, it must be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

(F) Sanctions.

(i) Continuance or Order. If at any time it is brought to the attention of the court that the prosecution, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(ii) Contempt. Any person who willfully disobeys a court order under these discovery

rules may be held in contempt.

EXPLANATORY NOTE

Rule 12 was adopted effective March 1, 2010; amended effective_____.

Juvenile court files and records are not discoverable under this rule. Statutory procedure must be followed to gain access to a juvenile court record.

References in this rule to “child’s counsel” include the child who is self-represented.

Rule 12 was amended, effective_____, to update terminology and
statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;
December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
20, 2007.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. § 27-21-12; ~~27-20-51~~ 27-20.2-21.

CROSS REFERENCE: N.D.Sup.Ct.Admin.R. 19 (Court Records Management Program).

RULE 13. SUBPOENA

(a) Content.

(1) A subpoena must state the court's name and the title of the action, and command the witness to attend and testify at the time and place the subpoena specifies. The clerk or magistrate must issue a signed blank subpoena, or a signed blank subpoena for the production of documentary evidence or objects, to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(2) The attorney for a party to any proceeding may issue a subpoena, or a subpoena for the production of documentary evidence or objects, in the court's name. A subpoena issued by an attorney has the same effect as a subpoena issued by the clerk or magistrate. The subpoena must state the attorney's name, office address, and the party for whom the attorney appears.

(b) Service. A peace officer or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the prosecution or an indigent party has requested the subpoena. Before the subpoena is served, a notice must be served on each party.

(c) Place of Service.

(1) In North Dakota. A subpoena requiring a witness to attend a hearing or other proceeding may be served anywhere within North Dakota.

(2) Witness Outside State. Service on a witness outside this state may be made only as provided by law.

(3) Subpoena in Out-of-State Action. N.D.R.Ct. 5.1 defines the procedure for discovery

24 or depositions in an out-of-state action.

25 (d) Producing Documents and Objects. A subpoena may order the witness to produce any
26 books, papers, documents, data, or other objects the subpoena designates. The court may direct
27 the witness to produce the designated items in court before the adjudication or disposition or
28 before the items are to be offered in evidence. When the items arrive, the court may permit the
29 parties and their attorneys to inspect all or part of them.

30 (e) Subpoena for Deposition.

31 (1) Issuance. An order to take a deposition authorizes the clerk of court or a magistrate to
32 issue a subpoena for any witness named or described in the order.

33 (2) Place. After considering the convenience of the witness and the parties, the court may
34 order, and the subpoena may require, the witness to appear anywhere the court designates.

35 (f) Objection to Subpoena. A witness may object to a subpoena if compliance would be
36 unreasonable or oppressive. The objection must be received before the earlier of 24 hours before
37 the time specified for compliance or ten days after the subpoena is served. On motion, the court
38 may quash or modify the subpoena.

39 (g) Contempt. Failure by any witness without adequate excuse to obey a subpoena served
40 upon that witness may be a contempt of the court from which the subpoena issued.

41 (h) Information Not Subject to Subpoena. No party may subpoena a statement of a
42 witness or of a prospective witness under this rule. Rule 12 governs the production of a
43 statement.

44 EXPLANATORY NOTE

45 Rule 13 was adopted effective March 1, 2010; amended effective March 1, 2013;
46 explanatory note amended_____.

Subdivision (c) was amended, effective March 1, 2013, to direct persons to N.D.R.Ct. 5.1 for information about how to proceed with discovery in this state in an action pending in an out-of-state court. N.D.R.Ct. 5.1 outlines procedure for interstate depositions and discovery.

SOURCES: ~~Joint Procedure Committee Minutes of January 26-27, 2012, pages 3-7, September 30, 2011, pages 12-15; April 28-29, 2011, page 25; Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007; Joint Procedure Committee Minutes of January 26-27, 2012, pages 3-7; September 30, 2011, pages 12-15; April 28-29, 2011, page 25.~~

~~STATUTES:~~

~~SUPERSEDED: N.D.C.C. § 27-20-18:~~

CROSS REFERENCE: N.D.R.Juv.P. 12 (Discovery); N.D.R.Ct. 5.1 (Interstate Depositions and Discovery).

RULE 15. NOTICE

(a) In General. Within five days of filing a written order, decision or judgment in a juvenile matter, a copy must be served on all parties as directed by the court.

(b) Modification Proceedings. A party seeking review or modification of an existing order must serve notice under Rule 7 of any hearing or proceeding on all parties.

(c) Children in Foster Care. In any matter involving a child in foster care under the responsibility of the state, the state must notify the child's foster parents, pre-adoptive parents and relatives providing care for the child whenever any proceeding is held with respect to the child.

(d) Guardian ad Litem. If a guardian ad litem has been appointed for a child, notice under Rule 15(a), (b), and (c) must be provided to the guardian ad litem.

EXPLANATORY NOTE

Rule 15 was adopted effective March 1, 2010; explanatory note amended effective _____.

In these rules, the term “guardian ad litem” includes lay and attorney guardians ad litem. Subdivision (c) was originally adopted as Rule 4.2 of the North Dakota Rules of Court on March 1, 2007. The language of Rule 4.2 was transferred to this rule effective March 1, 2010.

Subdivision (c) was a response to Public Law 109-239, which requires states receiving certain federal funds to have a foster parent notice rule. The requirement is codified at 42 U.S.C. § 629h(b)(1). Section 475 [42 U.S.C. § 675] requires that states provide a case review system under which foster parents, pre-adoptive parents, or relatives providing care for a child receive notice of proceedings and are given a right to be heard.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;

24 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
25 20, 2007. Joint Procedure Committee Minutes of September 28-29, 2006. Joint Procedure
26 Committee Minutes of May 21-22, 2009.

27 STATUTES AFFECTED:

28 CONSIDERED: N.D.C.C. § ~~27-20-36~~ 27-20.3-26.

RULE 16. MODIFICATION AND VACATION OF ORDERS

(a) Mandatory Vacation of Order. An order of the court must be set aside if:

- (1) it appears it was obtained by fraud or mistake;
- (2) the court lacked jurisdiction over a necessary party or of the subject matter; or
- (3) newly discovered evidence so requires.

(b) Discretionary Modification.

(1) Except an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child.

(2) An order terminating parental rights and the parent and child relationship may be vacated by the court on motion of the parent if the child is not placed for adoption and the person having custody of the child consents in writing to the vacation of the decree.

(3) An order granting probation to a child found to be delinquent ~~or unruly~~ may be reviewed on the ground that the conditions of probation have not been observed.

(c) Motion for Relief. Any party to the proceeding, the director of juvenile court or other person having supervision or legal custody of or an interest in the child may move the court for the relief provided in this rule. The motion must set forth in concise language the grounds on which relief is requested.

(d) Notice. Reasonable notice and an opportunity to be heard must be given to the child and the parent, guardian, or other custodian before the court may extend the duration of:

- (1) an order committing a delinquent ~~or unruly~~ child to the division of juvenile services;
- (2) an order placing a child in foster care; or

(3) an order placing a child in detention or ~~shelter~~ protective care.

(e) Oral Argument. After the motion is filed, the court must grant a request for oral argument and require notice to be served on the parties. After oral argument, which may be informal, the court may deny or grant relief as the evidence warrants.

EXPLANATORY NOTE

Rule 16 was adopted effective March 1, 2010. Amended effective March 1, 2021;
amended effective _____.

~~This rule~~ Rule 16 was amended, effective March 1, 2021, to clarify that the court must grant a request for oral argument and require notice to be served.

Rule 16 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 24, 2020, pages 8-9.

~~STATUTES AFFECTED:~~

~~SUPERSEDED: N.D.C.C. § 27-20-37.~~

CROSS REFERENCE: N.D.R.Juv.P. 14 (Motions).

RULE 17. JUVENILE COURT LAY GUARDIAN AD LITEM

(a) Qualifications.

(1) Before a person is eligible for service as a lay guardian ad litem, the person must satisfy the following minimum qualifications:

(A) Possess written credentials establishing that the person has:

- (i) a bachelor's degree, preferably in a human service, education or related field; or
- (ii) an associate degree in an academic field related to child care, child development, or children's services and at least three years of experience in the delivery or supervision of child care or children's services, child development services, or in the education of children.

(B) Complete a minimum of 18 hours of specialized lay guardian ad litem training;

(C) Complete an additional 18 hours of approved guardian ad litem training every three years;

(D) Possess communication skills necessary to successfully conduct an interview, prepare a written report, and make an oral presentation.

(2) A person is not eligible for service as a lay guardian ad litem if the person:

- (A) has pled guilty or been found guilty of a felony;
- (B) has pled guilty or been found guilty of an offense under N.D.C.C. ch. 12.1-20 or equivalent statute or ordinance;
- (C) has admitted or been adjudicated in juvenile court of an offense under N.D.C.C. ch. 12.1-20 or equivalent statute or ordinance; or
- (D) has committed a substantiated instance of child abuse or neglect, regardless of whether a criminal conviction was obtained.

(b) Responsibilities of a Lay Guardian Ad Litem. A lay guardian ad litem must:

(1) advocate for the best interests of the child;

(2) complete work in a timely, unbiased, and respectful manner while exercising independent judgment, gathering, information, participating in negotiations, and monitoring the case as ordered by the court, including:

(A) review relevant documents; including social services, psychological, psychiatric, medical, therapy, and education records;

(B) meet with and observe the child in the home setting or placement;

(C) interview parents, and other interested parties with relevant information to the case.

(3) participate in meetings impacting the life of a child, including attending all court proceedings related to the deprivation matter and other activities as directed by the court in the child's best interest for pre or post adjudication matters such as, child-family team meetings, settlement negotiations, and appropriate school meetings.

(4) obtain releases of information as required and observe all statutes, rules and regulations, regarding confidentiality. A lay guardian ad litem must not disclose or participate in the disclosure of information to any person, except as necessary to perform the guardian ad litem duties specifically provided by law.

(5) prepare a written report regarding the child's best interest, including conclusions with specific recommendations as appropriate to the facts of the case-psychological, psychiatric, parenting and chemical dependency evaluations or services or treatment deemed necessary - this report must be submitted to the juvenile court as directed by the court, and upon receipt copies must be provided to all parties by the juvenile court.

(6) treat all individuals with dignity, respect and sensitivity to religious background, racial

or ethnic heritage, cultural, gender/orientation and socio-economic diversity.

(7) comply with all state laws regarding the reporting of child abuse or neglect.

(c) Rights and Powers of a Lay Guardian Ad Litem.

(1) Court Proceedings. A lay guardian ad litem must attend all court proceedings unless excused by the court and must testify when requested. Except as allowed under Rule 5(d), a lay guardian ad litem may not call a witness, question a witness, file a motion, or act as a legal advocate.

(2) Interim Report. A lay guardian ad litem may submit an interim report and request a case status review. The interim report must be served on each party, who may serve and file a response within ten days after service of the report. The court may consider the interim report and any response without oral argument or evidentiary hearing. If the court finds grounds for a case status review, the court must set a hearing.

(d) Lay Guardian Ad Litem Review Board.

(1) Membership. The lay guardian ad litem review board consists of seven members: a chair appointed by the Chief Justice; one referee; one state's attorney; one parents' counsel; one representative from social services, one representative from juvenile court and one lay guardian. Board staff are one person from the guardian ad litem program and one person from the Court Administrator's office.

(2) Terms. Board members are appointed by the Chief Justice for three-year terms and may serve no more than three consecutive three-year terms. Of the members initially appointed and as determined by lot at the first meeting, two will serve for one year, two will serve for two years, and three will serve for three years. Subject to the three term limit, each member is eligible for reappointment and serves until the member's successor is appointed.

(3) Board Responsibilities. The board, through panels established under this rule, must receive and review complaints concerning the performance and conduct of lay guardians providing services under this rule.

(4) Complaints - Procedure for Review.

(A) All complaints must be submitted in writing to the staff attorney for the State Court Administrators Office who will forward the complaint to the chair of the board. The complaint must include facts underlying the complaint, must specify the misconduct that is the subject of the complaint, and must be signed by the complainant.

(B) Upon receipt of a written complaint, the chair of the board must determine if the complaint is with regard to a pending case in which lay guardian ad litem services are being provided. If the complaint involves lay guardian ad litem conduct in a pending case, the chair must inform the complainant that the complaint may only be addressed before the court that is hearing the pending case, either by seeking removal of the lay guardian or by contesting the information or recommendation contained in the lay guardian ad litem's report or testimony. In pending cases, review of the complaint and communications with the complainant must be handled by the chair of the board in a manner that assures the judge or referee presiding in the case remains uninformed about the complaint. If the complaint concerns conduct unrelated to a pending case, the following procedures apply:

(i) The chair of the board must review the complaint to determine whether the allegations, if true, have merit. If the allegations are determined to be without merit, the complaint will not be reviewed further and the chair must notify the complainant of the disposition.

(ii) If the chair of the board determines the allegations in the complaint, if true, have merit, the complaint must be referred to a three-member panel of the board appointed by the

93 chair. The panel must provide a copy of the complaint to the lay guardian and request a written
94 response from the lay guardian ad litem within 30 days of receipt of the request. The request
95 must identify specific issues in the complaint to which the panel desires a response. The lay
96 guardian ad litem must provide a copy of the response to the complainant. The panel may, as
97 circumstances warrant, request that the complainant and the lay guardian ad litem meet with the
98 panel to review the allegations in the complaint.

99 (5) Misconduct. In reviewing a complaint, the panel must consider whether the
100 allegations in the complaint indicate any of the following forms of misconduct:

- 101 (A) failure to fulfill responsibilities required under Rule 17(c);
102 (B) violation of the code of conduct for lay guardians, which is included and incorporated
103 in Rule 17 as an appendix;
104 (C) misrepresentation of qualifications to serve as a lay guardian ad litem;
105 (D) violation of state or local laws or court rules; or
106 (E) taking or failing to take any other action that would reasonably place the suitability of
107 the person to serve as a lay guardian ad litem in question.

108 (6) Findings and Dispositions. In considering the complaint and the lay guardian ad
109 litem's written response, the panel must make findings regarding each of the specific issues in the
110 complaint to which the panel requested a response. The findings must indicate that either there is
111 no merit to the issue based on the lay guardian ad litem's response or that there is merit to the
112 issue. The panel must determine whether the issues found to have merit indicate any form of
113 misconduct identified under Rule 17(e)(4). The panel may take any of the following actions:
114 issue a written reprimand, refer the lay guardian ad litem to additional training, require that the
115 lay guardian ad litem be assigned a mentor for a specified period of time, or direct that the lay

guardian ad litem be removed from the roster. The panel must take into consideration any prior complaints that resulted in the imposition of any of the identified actions. The complainant and the lay guardian ad litem must be notified in writing of the panel's disposition of the complaint. If the panel directs removal from the roster, the panel may specify the manner and time frame within which the person may apply for placement at a later time on the roster.

(7) Confidentiality. A complaint and any associated records are confidential unless the panel has determined under Rule 17(e)(5) that the complaint has merit. Confidential records may be disclosed only in response to a court order.

(8) Time Frames for Disposition. Complaints must be resolved within 25 days of receipt of the complaint if the complaint involves a pending case. All other complaints must be resolved within 120 days of receipt of the complaint. These time frames may be extended by the chair of the board upon a finding by the chair that good cause exists for an extension.

(e) Lay Guardian Ad Litem Training. The state court administrator must provide for regular training programs to satisfy the qualification requirements under Rule 17 (A)(B)(C). The state court administrator must provide for the development and maintenance of a lay guardian ad litem manual to serve as a resource for those providing services under Rule 17 and as a basis for lay guardian ad litem training programs.

EXPLANATORY NOTE

Rule 17 was adopted effective March 1, 2010; amended effective May 1, 2015; ~~amended effective January 1, 2018; explanatory note amended effective~~ _____.

N.D.C.C. § ~~27-20-48~~ 27-20.2-18 requires appointment of a lay guardian ad litem for a child in a juvenile proceeding “~~if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests~~

139 ~~of the child require a guardian if the child has no parent, guardian, or custodian appearing on the~~
140 ~~child's behalf or the interests of the parent, guardian, or custodian conflict with the child's or in~~
141 ~~any other case in which the interests of the child require a guardian.~~” N.D.C.C. § 50-25.1-08,
142 requires appointment of a guardian ad litem in every case involving an abused or neglected child
143 that results in a judicial proceeding.

144 Subdivision (a) was amended, effective May 1, 2015, to provide a list of circumstances
145 that disqualify a person from service as a lay guardian ad litem.

146 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014, pages
147 4-5; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008;
148 September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of January 29-30,
149 2015, pages 7-8; September 25-26, 2014, pages 12-17; May 21-22, 2009, pages 18-22.

150 STATUTES AFFECTED:

151 CONSIDERED: N.D.C.C. §§ ~~27-20-48~~ 27-20.2-18, 50-25.1-08.

152 CROSS REFERENCE: N.D.R.Ct. 8.7 (Guardian ad Litem).

RULE 18. DISPOSITION; CONDITIONS

(a) In General. If a child is found to be delinquent ~~or unruly~~, the court may make any order of disposition authorized by law that is best suited to the child's treatment, rehabilitation, and welfare.

(b) Restitution.

(1) In cases where a petition has been filed, the court must determine the amount of restitution owed, if any, and include that determination in an order. A court officer may be asked to investigate, and recommend a restitution amount. The case may be referred to offender accountability conferencing to determine restitution. However, the court must approve the final determination.

(2) In non-petition cases, the court officer or offender accountability conferencing must set the restitution amount, if any.

(A) The determination of restitution amounts must be subject to conditions and limitations that otherwise apply to informal adjustment, such as parental consent and limits on use of statements.

(B) If a restitution amount cannot be agreed to, or if there is a willful failure to pay, the case must be considered for formal adjudication.

(C) In determining the amount of restitution owed, the court or court officer or offender accountability conferencing must make the determination in accordance with N.D.C.C. §§ 12.1-32-08 and ~~27-20-31.2~~ 27-20.4-20.

(D) If the court, court officer, or offender accountability conferencing determines that there is an inability to pay all or part of the restitution owed, assignment of community service

hours may be considered.

(c) Community Service.

(1) In cases where a petition has been filed, the court must determine, if any, the number of community service hours to be completed and must include that determination in an order.

(2) In non-petition cases, the court officer must set, if any, the community service hours.

(3) In referring a child to a community service placement, the court officer must ensure that:

(A) the work being performed is in compliance with child labor laws;

(B) the child is covered under worker's compensation by the agency, workplace or North Dakota Court System.

(4) The child may be required to pay a reasonable fee to the agency or workplace to cover the cost of worker's compensation.

(d) Drug Screening.

(1) In General. The juvenile court will:

(A) assess the need for drug testing among children and limit the testing to appropriate children;

(B) use drug testing as a dispositional option in both formal and informal proceedings when the testing is reasonably related to the rehabilitation of children in need of chemical dependency treatment;

(C) provide the testing and supervision necessary to deter chemical abuse, ~~unruly and~~ delinquent behavior and to help identify treatment needs of each child;

(D) provide trained staff to conduct the testing.

(2) Formal Adjudication.

47 (A) The juvenile court must determine, by written order, which children will be subject to
48 drug testing. The court may order testing for:

49 (i) any child found to possess or who is involved with the sale or distribution of illegal
50 drugs;

51 (ii) any child who has two or more alcohol related offenses;

52 (iii) any child with a drug/alcohol problem as determined through his/her own admission,
53 his/her parents' admission or knowledge or suspected use, an alcohol or drug evaluation, or prior
54 involvement in a treatment program;

55 (iv) other cases based on articulated reasons.

56 (B) The testing techniques, methods, equipment, training, and standards for determining a
57 test to be positive must be approved by the Director of Juvenile Court Services.

58 (C) The child and the custodial parents, must be informed by the juvenile court of the
59 following:

60 (i) The child has the right to refuse testing. A refusal will be considered a positive test
61 result for purposes of developing a treatment plan.

62 (ii) A positive test result may not be used to bring a new charge against a child, but may
63 be used to ask for a review hearing for a formal change in the court order.

64 (iii) Observed urine collection must be taken by same gender staff.

65 (iv) Test results may not be released to any person or agency, with the exception of the
66 child, the child's parents, and juvenile court authorities, without the parents' prior written consent,
67 or as required by law.

68 (5) Informal Adjustment. A juvenile court officer, with the consent of the parties
69 involved, may establish drug and alcohol screening as a condition of an informal adjustment

consistent with the procedures and conditions set forth in the formal adjudication process.

(e) ~~House Arrest~~ Home Confinement in Lieu of Detention.

(1) In General.

(A) ~~House arrest~~ Home confinement may be requested by a parent in lieu of detention, authorized by a juvenile court officer as part of release conditions under N.D.C.C. § ~~27-20-17(1)~~ 27-20.4-09 (1), or authorized in a court order.

(B) Consequences imposed for violations must be predefined and signed by parent or custodian, child and court officer.

(C) The court order may include a standing pickup order or consequences for violation of the conditions if release from detention pending further hearing.

(D) If a violation of ~~house arrest~~ home confinement occurs and if the child is placed in detention as a result, a detention hearing must be held within 24 hours to review the alleged violation.

(E) ~~House arrest~~ Home confinement that is monitored by an electronic device is limited to two weeks, unless extended by the court.

(f) Juvenile Drug Court. If a child is ordered to participate in the Juvenile Drug Court Program, N.D. Sup. Ct. Admin. R. 56 governs the treatment of the child.

EXPLANATORY NOTE

Rule 18 took effect May 1, 2015; amended effective_____.

Rule 18 consolidates provisions previously contained in the Unified Judicial System Policy Manual. Subdivisions (b) and (c) are derived from Policy 404 on Restitution and Community Service. Subdivision (d) is derived from Policy 401 on Screening and Testing Juveniles for Drug and Alcohol Use. Subdivision (e) is derived from Policy 407 on Electronic

Monitoring.

Rule 18 was amended, effective _____, to update terminology and statutory references consistent with the July 1, 2021, amendments to the Juvenile Court Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014, page 5. Joint Procedure Committee Minutes of January 29-30, 2015, page 8; September 25-26, 2014, pages 17-18.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. §§ 12.1-32-08, ~~27-20-17, 27-20-31, 27-20-32, 27-20-31.2, 27-20-33~~ 27-20.2-16, 27-20.3-15, 27-20.3-16, 27-20.3-24, 27-20.4-01, 27-20.4-17, 27-20.4-09, 27-20.4-20.

CROSS REFERENCE: N.D. Sup. Ct. Admin. R. 56 (Juvenile Drug Court Advisory Committee).

RULE 19. JUVENILE RECORDS

(a) Records Confidential.

(1) Juvenile court records are confidential and not open to inspection or release except as provided by N.D.C.C. § ~~27-20-51~~ 27-20.2-21 and the rules of the supreme court.

(2) Disclosure of papers, reports, notes, files, or records may be restricted or authorized by court order, except that judge, referee or court personnel work material and notes may not be released to anyone under any circumstances.

(b) Disclosure of Records.

(1) In General. N.D.C.C. § ~~27-20-51(1)~~ 27-20.2-21(1) lists the persons and entities who may routinely inspect juvenile court files and records.

(2) Court Order. Upon written request or motion a judge or referee of the juvenile court may permit inspection or release of pertinent information of all or some portion of a court record to the persons and entities listed in N.D.C.C. § ~~27-20-51(2)~~ 27-20.2-21(2) and the following:

(A) persons or agencies conducting pertinent research studies;

(B) the victim or a member of the victim's immediate family on behalf of the victim or to an insurance company representing the victim;

(C) the military if a release of information has been signed by the subject of the petition or the parents of the subject if the child is under 18 years of age.

(3) Social Service Reports. Social service reports (960's) may be released under Rule 12 to attorneys representing the parties involved. Unless otherwise ordered by the court, names of persons reporting the alleged incident must be deleted from the reports. See N.D.C.C. Section 50-25.1-11(1)(d).

(4) Statistical Information. Statistics and other general information which do not identify parties and which are generated in the normal course of business may be released to any party, including the press. Requests for special reports or information must be forwarded to the State Court Administrator.

(5) Drug and Alcohol Treatment Records. Drug and alcohol treatment records within a file and which are confidential under 42 CFR Part 2 may not be disclosed unless:

(A) the person who is the subject of the records has signed a valid consent form authorizing disclosure;

(B) the court has found there is good cause for disclosure and has issued an authorizing order in accordance with 42 CFR Section 2.64 or 2.66, as applicable; or

(C) the court has issued an order authorizing disclosure in accordance with 42 CFR Section 2.63 or 2.65, as applicable.

For purposes of this paragraph, “disclosure” includes duplication of records permitted under Rule 19(c).

(6) Research. The chief justice may authorize the release of information from juvenile records for research purposes when the Supreme Court has requested such research, or a research project has been proposed, and the chief justice has determined that the research results may be used to improve court response to issues of delinquency, deprivation, minor guardianship, or termination of parental rights.

(c) Copying Records.

(1) Documents not original to the juvenile court may not be duplicated except:

(A) for purposes of conducting a hearing, documents may be duplicated but must be returned to the court after the hearing; or

47 (B) upon written approval of the agency which originally created the document; or

48 (C) upon order of the court.

49 (2) Documents generated by the juvenile court may be duplicated as appropriate to meet
50 the informational needs of the entities or persons listed in N.D.C.C. § ~~27-20-51(1)~~ 27-20.2-21(1)
51 or any other person or entity considered appropriate by the court.

52 (d) Early Destruction of Records. A party who is the subject of a delinquency or unruly
53 proceeding may petition the court for early destruction of records. The state's attorney of the
54 county in which the records are held must be notified of the request. The judge may order the
55 early destruction upon a showing of good cause to destroy the records by the party. The records
56 may not be destroyed if it is known that the subject of the motion has criminal charges pending
57 before any other court.

58 EXPLANATORY NOTE

59 Rule 19 took effect May 1, 2015. Amended effective March 1, 2021;_____.

60 Rule 19 consolidates provisions previously contained in the Unified Judicial System
61 Policy Manual. Subdivisions (a), (b) and (c) are derived from Policy 402 on Juvenile Court
62 Records. Subdivision (d) is derived from Policy 403 on Expungement.

63 Paragraph (b)(6) was added, effective March 1, 2021, to allow the chief justice to
64 authorize the release of information from juvenile records for research purposes.

65 Rule 19 was amended, effective _____, to update terminology and
66 statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
67 Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

68 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; September 5, 2014,
69 page 5. Joint Procedure Committee Minutes of April 24, 2020, pages 9-10; January 29-30, 2015,

70 page 8; September 25-26, 2014, pages 18-20.

71 STATUTES AFFECTED:

72 CONSIDERED: N.D.C.C. § ~~27-20-51~~ 27-20.2-21; ch 54-23.4; § 50-25.1-11(1)(d).

73 CROSS REFERENCE: N.D.R.Juv.P. 12 (Discovery); N.D.Sup.Ct.Admin.R. 41 (Access
74 to Court Records).