

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20250104

**Amendments to North Dakota Supreme Court Administrative Rule 58
Regarding Vexatious Litigation**

[¶1] The State Court Administrator proposed amendments to North Dakota Supreme Court Administrative Rule 58 regarding vexatious litigation. The proposal is available [here](#). 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, as further amended by the Court, the amendments to North Dakota Supreme Court Administrative Rule 58 are ADOPTED effective immediately.

[¶3] The Supreme Court of the State of North Dakota convened with the Honorable Jon J. Jensen, Chief Justice, and the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Douglas A. Bahr, Justices, directing the Clerk of the Supreme Court to enter the above order.

[¶4] Dated: 4/3/2025

Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

1 Administrative Rule 58 – VEXATIOUS LITIGATION

2 Effective Date: 3/1/2025

3 **Section 1. Purpose.**

4 This rule addresses vexatious litigation, which impedes the proper
5 functioning of the courts and court-related adjudicative bodies, while
6 protecting reasonable access to those tribunals.

7 **Section 2. Definitions.**

8 (a) “Litigation” means any civil or disciplinary action or proceeding,
9 including small claims actions, any appeal from an administrative
10 agency, any review of a referee order by the district court, and any
11 appeal to the supreme court. “Litigation” does not include criminal
12 actions.

13 (b) For purposes of this rule, “presiding judge” means the presiding
14 judge of a district under N.D. Sup. Ct. Admin. R. 2, the chair of the
15 disciplinary board, or the chair of the judicial conduct commission. For
16 purposes of this rule, and as context may require, references to a judge
17 or to the court also refer to the disciplinary board or the judicial conduct
18 commission. When the presiding judge has recused or is disqualified
19 from a matter, the matter must be reassigned under N.D. Sup. Ct.
20 Admin. R. 2(9) or (10).

21 (c) “Vexatious conduct” means conduct that:

22 (1) serves primarily to harass or maliciously injure another party in
23 litigation;

24 (2) is not warranted under existing law and cannot be supported by a
25 good faith argument for an extension, modification, or reversal of
26 existing law;

27 (3) is imposed solely for delay;

28 (4) hinders the effective administration of justice;

29 (5) imposes an unacceptable burden on judicial personnel and
30 resources; or

31 (6) impedes the normal and essential functioning of the judicial process.

32 (d) "Vexatious litigant" means a litigant, either self-represented or
33 through an attorney, who:

34 (1) In the immediately preceding seven-year period, has commenced,
35 prosecuted, or maintained at least ~~three~~ two litigations that:

36 (A) involved vexatious conduct on the part of the litigant and

37 (B) were finally determined adversely to that person;

38 (2) After a litigation has been finally determined against the person, the
39 person has repeatedly relitigated or attempted to relitigate either:

40 (A) the validity of the determination against the same party or parties as
41 to whom the litigation was finally determined; or

42 (B) the cause of action, claim, controversy, or any of the issues of fact
43 or law, determined or concluded by the final determination against the
44 same party or parties as to whom the litigation was finally determined;

45 (3) In any litigation, the person repeatedly:

46 (A) files unmeritorious motions, pleadings, or other papers; or

47 (B) conducts unnecessary discovery; or

48 (C) engages in any other tactics, and such conduct is frivolous or
49 intended to cause unnecessary burden, expense, or delay; or

50 (4) In any litigation, the person has previously been declared a
51 vexatious litigant by any state or federal court of record in any action or
52 proceeding.

53 **Section 3. Procedure-Designate Vexatious Litigant.**

54 (a) At the request of a party or on the court's own motion, the presiding
55 judge may designate a litigant as a vexatious litigant.

56 (b) If the presiding judge finds by a preponderance of the evidence that
57 there is a basis to conclude that a person is a vexatious litigant and that
58 a pre-filing order should be issued, the presiding judge must issue a
59 proposed pre-filing order along with the proposed findings supporting
60 the issuance of the pre-filing order. The person who would be
61 designated as a vexatious litigant in the proposed order will have 14
62 days to file a written response to the proposed order and findings. If a
63 response is filed, the presiding judge may, in the judge's discretion,
64 grant a hearing on the proposed order. If no response is filed within 14
65 days, or if the presiding judge concludes following a response and any
66 subsequent hearing that there is a basis for issuing the order, the
67 presiding judge may issue the pre-filing order.

68 (c) The pre-filing order may:

69 (1) prohibit the vexatious litigant from filing any new litigation or any new
70 documents in existing litigation in this state without first obtaining leave
71 of a judge of the court where the litigation is proposed to be filed.

72 (2) require the vexatious litigant to furnish security to assure payment of
73 the moving party's reasonable expenses, costs, and, if authorized,
74 attorney fees incurred in a pending action.

75 (3) require the vexatious litigant to take any other action reasonably
76 necessary to curb the vexatious litigant's vexatious conduct.

77 (d) A pre-filing order must contain:

78 (1) an exception allowing the person subject to the order to file an
79 application seeking leave to file.

80 (2) a requirement that before ruling on the merits of any subsequent
81 filing the court must rule on the application for leave to file.

82 (3) an award of all costs of the vexatious litigation against the filing
83 party.

84 (4) an award of all reasonable attorneys' fees and costs associated with
85 responding to the vexatious litigant, including the cost of seeking the
86 prefiling order.

87 **Section 4. Procedure-New Litigation and Subsequent Filings.**

88 (a) In order to file new litigation or documents into existing litigation, a
89 vexatious litigant must file an application for leave to file using the form
90 approved by the state court administrator. The documents the vexatious
91 litigant seeks to file must be submitted separately from the application
92 for leave to file. The documents the vexatious litigant seeks to file will
93 not be docketed unless the court grants the application for leave to file.

94 (b) A court may permit the filing of new litigation or documents into
95 existing litigation only if it appears that the litigation or document has
96 merit and has not been filed for the purpose of harassment or delay.

97 (c) If the court issues an order granting leave to file new litigation or a
98 document into existing litigation, a party's time to answer or respond will
99 begin to run when the party is served with the order of the court and a
100 copy of the new litigation or document.

101 (d) The clerk may not file any litigation presented by a vexatious litigant
102 subject to a pre-filing order unless the vexatious litigant first obtains an
103 order permitting the filing. If the clerk mistakenly files the litigation
104 without the order, any party may file a notice stating that the plaintiff or
105 complaining party in a disciplinary proceeding is a vexatious litigant
106 subject to a pre-filing order. The filing of such notice automatically stays
107 the litigation. The litigation must be dismissed or denied unless the
108 plaintiff or complainant, within 10 days of the filing of the notice, obtains
109 an order permitting the litigation to proceed. If a party is served with new
110 litigation but the action is not filed with the clerk, the party served is not
111 required to respond to the new litigation unless the vexatious litigant

112 obtains an order allowing the litigation to be filed and files and serves
113 the new litigation.

114 (e) Upon receiving an application for leave to file, or upon notice from
115 any party named in the litigation, the court must rule on the application
116 before ruling on the merits of any proposed filing.

117 (f) An order granting leave to file is not required for an application for
118 indigent defense services.

119

120 **Section 5. Sanctions.**

121 (a) Disobedience of a pre-filing order entered under this rule may be
122 punished as a contempt of court.

123 (b) If a vexatious litigant subject to a pre-filing order files any new
124 litigation without first obtaining the required leave of court, the court may
125 summarily dismiss the action without notice.

126 (c) The court may award reasonable attorney's fees and costs to the
127 party filing the notice under section 4(d) of this rule.

128

129 **Section 6. Appeal.**

130 (a) A pre-filing order entered by a presiding judge designating a person
131 as a vexatious litigant may be appealed to the supreme court under
132 N.D.C.C. § 28-27-02 and N.D.R.App.P. 4.

133 (b) A pre-filing order entered by the supreme court is not appealable.

134 (c) An order denying the application for leave to file by a vexatious
135 litigant is not appealable.

136 **Section 7. Supreme Court Order.**

137 The supreme court may, on the court's own motion or the motion of any
138 party to an appeal, enter a pre-filing order prohibiting a vexatious litigant

139 from filing any new litigation in the courts of this state as a self-
140 represented party without first obtaining leave of a judge of the court
141 where the litigation is proposed to be filed. If the supreme court finds
142 that there is a basis to conclude that a person is a vexatious litigant and
143 that a pre-filing order should be issued, the court must issue a proposed
144 pre-filing order along with the proposed findings supporting the issuance
145 of the pre-filing order. The person who would be designated as a
146 vexatious litigant in the proposed order will have 14 days to file a written
147 response to the proposed order and findings. If a response is filed, the
148 supreme court may, in the court's discretion, grant a hearing on the
149 proposed order. If no response is filed within 14 days, or if the supreme
150 court concludes following a response and any subsequent hearing that
151 there is a basis for issuing the order, the supreme court may issue the
152 pre-filing order.

153 **Section 8. Electronic Filing.**

154 Self-represented parties who have been declared vexatious litigants will
155 not be permitted to file documents electronically and will not be provided
156 a user ID and password to access the system. A self-represented
157 vexatious litigant must file in paper format in compliance with all other
158 Rules of Court.

159 **Section 9. Roster.**

160 The clerk of court must provide a copy of any pre-filing order issued
161 under this rule to the state court administrator and the United States
162 District Court for the District of North Dakota. ~~who will~~ The state court
163 administrator must maintain a list ([current list](#)) of vexatious litigants
164 subject to pre-filing orders.

165 Prior Rosters:

- 166 • [2023-01-27 Roster of Vexatious Litigants](#)
- 167 • [2022-11-07 Roster of Vexatious Litigants](#)
- 168 • [2022-10-05 Roster of Vexatious Litigants](#)
- 169 • [2022-07-14 Roster of Vexatious Litigants](#)

- 170 • [2022-05-27 Roster of Vexatious Litigants](#)

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172 **Section 10. Effect of Pre-Filing Order.**

173 A pre-filing order entered under this rule supersedes any other order
174 limiting or enjoining a person’s ability to file or serve papers or pleadings
175 in any North Dakota state court litigation.

176

Explanatory Note

177 Rule 58 was rewritten and adopted effective, March 1, 2025 and
178 amended effective _____. Previous rule was adopted effective March
179 1, 2017; amended effective June 21, 2017; August 11, 2021; September
180 1, 2022; January 25, 2023.

181 The rule was amended effective _____ to correspond with legislation
182 enacted in the 2025 Legislative Session.

183 SOURCES: Joint Procedure Committee Minutes of April 26, 2024,
184 pages 6-7; January 26, 2024, pages 13-14; April 29, 2022, pages 13-14;
185 May 12-13, 2016, pages 25- 29. Idaho Ct. Admin. R. 59.

186 STATUTES AFFECTED:

187 CONSIDERED: N.D.C.C. §§ 27-05-06, 27-05-22, 27-05-23, 28-27-02,
188 _____.

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