

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20240181

Amendments to North Dakota Rules of Civil Procedure; North Dakota Rules of Criminal Procedure; North Dakota Rules of Evidence; North Dakota Rules of Appellate Procedure; North Dakota Rules of Court; North Dakota Supreme Court Administrative Rules; and North Dakota Rules of Juvenile Procedure

[¶1] On July 8, 2024, the Joint Procedure Committee submitted proposed amendments to North Dakota Rules of Civil Procedure 68 and 81; North Dakota Rules of Criminal Procedure 1 and 24; North Dakota Rules of Evidence 106 and 615; North Dakota Rules of Appellate Procedure 2.2 and 35; North Dakota Rules of Court 1.1, 3.2, 3.4, 5.1, 5.3, 5.5, 6.2, 6.3, 6.6, 6.7, 6.8, 6.11, 7.1, 7.2, 8.1, 8.2, 8.4, 8.5, 8.6, 8.8, 8.9, 8.11, 9.1, 10.2, 10.3, 11.3, 11.5, 11.6, 11.10; North Dakota Supreme Court Administrative Rules 20, 21, 39, 40, 41, 58; and North Dakota Rules of Juvenile Procedure 10.2. 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 allowed public comment on the proposal. The Court considered the matter, and

[¶2] IT IS HEREBY ORDERED that, except for North Dakota Rule of Civil Procedure 68 and as further amended by the Court, North Dakota Rule of Civil Procedure 81; North Dakota Rules of Criminal Procedure 1 and 24; North Dakota Rules of Evidence 106 and 615; North Dakota Rules of Appellate Procedure 2.2 and 35; North Dakota Rules of Court 1.1, 3.2, 3.4, 5.1, 5.3, 5.5, 6.2, 6.3, 6.6, 6.7, 6.8, 6.11, 7.1, 7.2, 8.1, 8.2, 8.4, 8.5, 8.6, 8.8, 8.9, 8.11, 9.1, 10.2, 10.3, 11.3, 11.5, 11.6, 11.10; North Dakota Supreme Court Administrative Rules 20, 21, 39, 40, 41, 58; and North Dakota Rules of Juvenile Procedure 10.2 are ADOPTED effective March 1, 2025.

[¶3] IT IS FURTHER ORDERED that the amendments to North Dakota Rule of Civil Procedure 68 are rejected.

[¶4] 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.

[¶5] Dated: 10/16/2024

Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

TABLE A. SPECIAL STATUTORY PROCEEDINGS UNDER RULE 81

The following is a nonexclusive list of statutes pertaining to special statutory proceedings.

North Dakota Century Code

10-19.1	North Dakota Business Corporation Act—Dissolution
14-07-12 to 14-07-14	Transfer of Property When Spouse Abandoned or Imprisoned
14-09-06	Habeas Corpus to Determine Custody of Minor [repealed]
14-12.2	Uniform Interstate Family Support Act
14-15	Revised Uniform Adoption Act
14-20	Uniform Parentage Act
16.4-01-08	Correcting Errors on Ballots
16.1-16	Contest of Elections
18-01-18 to 18-01-27	Proceedings to Abate Fire Hazards
27-10	Contempts
27-20	Uniform Juvenile Court Act
<u>27-20.1</u>	<u>Guardianship of a Child</u>
<u>27-20.2</u>	<u>Juvenile Court Act</u>
<u>27-20.3</u>	<u>Child Welfare</u>
<u>27-20.4</u>	<u>Delinquency</u>
Title 30.1	Uniform Probate Code
32-15	Eminent Domain
32-16	Action for Partition of Real Property
32-17	Actions to Quiet Title and Determine Claims to Real Estate
32-18	Cancellation of Land Contracts
32-19	Foreclosure of Real Estate Mortgage by Action
32-20	Foreclosure of Liens on Personal Property
32-22	Habeas Corpus
32-26	Administration of Assignment for Benefit of Creditors
32-27	Establishing Citizenship
32-28	Change of Names of Persons and Places
32-29.3	Uniform Arbitration Act
32-30	Proceedings Against Joint Debtors
32-31	Foreclosure of Tax Liens
32-32	Special Proceedings, General Provisions

32-33	Writ of Certiorari
32-34	Writ of Mandamus
32-35	Writ of Prohibition
32-37	Establishing Date and Place of Birth
40-47-11	Determination of Board of Adjustment Reviewable
40-51.2-15	Review of Determination of Administrative Law Judge by Certiorari
44-01-10	Approval of Bond of Public Officer [repealed]
49-11-12	Review of Commission's Disapproval of Plan for Railroad Crossing Without Stopping [repealed]
57-30	Action by County to Quiet Title
59-04	Administration of Trusts [repealed]
60-06	Public Warehouses on Railroad Right-of-Way

RULE 1. SCOPE AND EXCEPTIONS

(a) Scope. These rules govern the practice and procedure in all criminal proceedings in the district courts and, so far as applicable, in all other courts, including prosecutions for violations of municipal ordinances and prosecutions for contempt when punitive sanctions are sought in a nonsummary proceeding.

(b) Excepted Proceedings.

(1) Habeas Corpus. These rules do not apply to proceedings on any application for a writ of habeas corpus under N.D.C.C. ch. 32-22 or N.D.C.C. ch. 25-03.1 nor to other habeas corpus proceedings authorized by law.

(2) Peace Bonds. These rules do not alter the power of magistrates authorized by law to act within the county to take and hold security for the prevention of a public offense or of a district judge to dispose of such peace bonds as provided by N.D.C.C. ch. 29-02. However, these rules apply to procedure under N.D.C.C. ch. 29-02, so far as they are consistent with this chapter.

(3) Commitment Proceedings. These rules do not apply to proceedings for determining whether a proposed patient should be ordered committed to the state hospital at Jamestown or any other hospital or school under N.D.C.C. title 25 or other laws.

(4) Other Proceedings. These rules do not apply to:

- 23 (A) extradition and rendition of fugitives;
24 (B) forfeiture of property for violation of a statute of this state;
25 (C) the collection of fines and penalties;
26 (D) proceedings under the ~~Uniform~~ Juvenile Court Act, N.D.C.C. ch.
27 27-20.2, and Delinquency, N.D.C.C. ch. 27-20.4.

28 EXPLANATORY NOTE

29 Rule 1 was amended, effective March 1, 1992; March 1, 1994; March 1, 2006;
30 March 1, 2009; March 1, 2013; March 1, 2025.

31 Rule 1 defines the scope of the North Dakota Rules of Criminal Procedure. These
32 rules are designed primarily for the district courts, but are also designed to provide the
33 necessary machinery for all state courts with original jurisdiction. This includes
34 municipal court prosecutions for violations of municipal ordinances. The rules apply to
35 all criminal proceedings, and the term “proceedings” includes all possible steps in the
36 case from its inception to judgment and sentence. Although the vast bulk of statutory
37 procedure is superseded by the rules, statutes containing procedure beyond the scope of a
38 rule, but possibly supplemental to the procedure under a rule, are listed as “considered.”
39 (see Table of Statutes Affected).

40 Subdivision (b) lists proceedings that are not governed by these rules.

41 Paragraph (b)(1) recognizes that habeas corpus is not a criminal proceeding but an
42 independent and collateral inquiry into the validity of a conviction. See N.D.C.C. chs. 32-
43 22, 25-03.1.

44 Paragraph (b)(2) provides that these rules shall apply to peace bond procedures
45 when this is consistent with N.D.C.C. ch. 29-02.

46 Paragraph (b)(3) excludes commitment proceedings from these rules. See
47 N.D.C.C. tit. 25.

48 Paragraph (b)(4) excludes certain other procedures which are either civil in nature
49 or cannot be classified as either civil or criminal, including:

50 (1) extradition or rendition of fugitives (N.D.C.C. ch. 29-30.3);

51 (2) the collection of fines and penalties (see N.D.R.Civ.P. 69); and

52 (3) proceedings under the ~~Uniform~~ Juvenile Court Act and Delinquency (see
53 N.D.C.C. chs. 27-20.2 and 27-20.4).

54 Paragraph (b)(4) was amended, effective March 1, 2009, to delete a reference to
55 paternity actions, which are wholly civil in nature under N.D.C.C. ch. 14-20.

56 Rule 1 was amended, effective March 1, 1992. The phrase “by statute and” was
57 deleted to eliminate the conflict that occasionally occurred between rules and statutes.
58 The amendment was not intended to delete any procedural rules in statutes that are not
59 covered by court rules.

60 Rule 1 was amended, effective March 1, 1994, to provide that these rules apply to
61 nonsummary contempt proceedings when punitive sanctions are sought.

62 Rule 1 was amended, effective March 1, 2006, in response to the December 1,
63 2002, revision of the Federal Rules of Criminal Procedure. The language and
64 organization of the rule were changed to make the rule more easily understood and to

65 make style and terminology consistent throughout the rules. As part of this amendment,
66 subdivision (b) was transferred to Rule 1 from Rule 54.

67 SOURCES: Joint Procedure Committee Minutes of January 26, 2024, page 10;
68 April 24-25, 2008, pages 11-12; April 28-29, 2005, page 13; April 29-30, 1993, pages 2-
69 3; October 29-30, 1992, page 7; November 7-8, 1991, page 14; January 27-29, 1972,
70 pages 1-3 January 26-27, 1968, page 1; November 17-18, 1967, page 1; Fed.R.Crim.P. 1.

71 STATUTES AFFECTED:

72 ~~Superseded~~ SUPERSEDED: N.D.C.C. § 40-18-11.

73 ~~Considered~~ CONSIDERED: N.D.C.C. chs. 14-20, 25-03.1, 25-03.2, 25-03.3, 25-
74 04, 27-20.2, 27-20.4, 29-02, 32-22.

75 CROSS REFERENCE: N.D.R.Civ.P. 69 (Execution); N.D.R.Ct. 5.2 (Writs).

RULE 24. TRIAL JURORS

(a) Examination of Jurors.

(1) Prospective Jurors. When a 12-person jury is to be impaneled, the court must call for examination not more than the number of prospective jurors that equals the number of jurors necessary for the jury plus the number of peremptory challenges available to the parties, unless otherwise stipulated by the parties and approved by the court. When a six-person jury is to be impaneled, the court may call for examination a number of prospective jurors equal to the number of jurors necessary for the jury plus the number of peremptory challenges available to the parties. If, after the parties have exercised their challenges, there are more jurors than required by Rule 23, the excess jurors must be excused in the inverse order in which they were called.

(2) Examination. The court must permit the defendant or the defendant's attorney and the prosecuting attorney to participate in the examination of prospective jurors. The court may allow individual examination of prospective jurors in ~~chambers or a closed courtroom~~ location for a compelling reason after applying and announcing on the record the factors establishing the overriding interest for courtroom closure. The court must make a record of the examination.

(b) Challenges.

23 (1) Challenges for Cause.

24 (A) By the Court. If the court, after examination of any prospective
25 juror, finds grounds for challenge for cause, the court must excuse
26 that prospective juror.

27 (B) By a Party. If the court does not excuse a prospective juror for
28 cause, any party may make a challenge for cause. A challenge to a
29 prospective juror must be made before the juror is sworn to try the
30 case.

31 (2) Peremptory Challenges. Each side is entitled to:

32 (A) 4 peremptory challenges when a 6-person jury is to be
33 impaneled; and

34 (B) 6 peremptory challenges when a 12-person jury is to be
35 impaneled, except when the offense charged is a AA felony, each
36 side is entitled to 10 peremptory challenges.

37 (C) If there is more than one defendant, the court may allow the
38 defendants additional peremptory challenges and permit them to be
39 exercised separately or jointly.

40 (c) Alternate Jurors.

41 (1) In General. The court may impanel up to four alternate jurors to replace
42 any jurors who are unable to perform or who are disqualified from
43 performing their duties.

44 (2) Procedure.

45 (A) Alternate jurors must have the same qualifications and be
46 selected and sworn in the same manner as any other jurors.

47 (B) Alternate jurors replace jurors in the same sequence in which the
48 alternates were selected. An alternate juror who replaces a juror has
49 the same authority as the other jurors.

50 (3) Retaining Alternate Jurors. The court may retain alternate jurors after
51 the jury retires to deliberate. The court must ensure that a retained alternate
52 does not discuss the case with anyone until that alternate replaces a juror or
53 is discharged. If an alternate replaces a juror after deliberations have begun,
54 the court must instruct the jury to begin its deliberations anew.

55 (4) Peremptory Challenges. Each side is entitled to the number of additional
56 peremptory challenges to prospective alternate jurors specified below.

57 These additional challenges may be used only to remove alternate jurors.

58 (A) One or Two Alternates. One additional peremptory challenge is
59 permitted when one or two alternate jurors are impaneled.

60 (B) Three or Four Alternates. Two additional peremptory challenges
61 are permitted when three or four alternate jurors are impaneled.

62 EXPLANATORY NOTE

63 Rule 24 was amended, effective January 1, 1988; March 1, 1990; March 1, 2006;
64 March 1, 2011; March 1, 2019; March 1, 2022; January 25, 2023; March 1, 2025.

65 Rule 24 is an adaptation of Fed.R.Crim.P. 24, and is modified to conform to
66 existing state practice. Rule 24 is intended to ensure that a defendant's Sixth Amendment

67 guarantee of an “impartial jury” is protected. To implement this right to an impartial jury,
68 subdivision (a) permits an examination of prospective jurors to determine whether any
69 juror is biased for or against either party, or whether any juror’s status or views are such
70 that bias may be inferred. Others may be challenged peremptorily, but the number of
71 those challenges is limited by subdivision (b).

72 Subdivision (a) was modified to allow the continuance of the present practice
73 permitting the examination of jurors by opposing parties or their attorneys and by the
74 court. This differs from the federal rule, which gives the court discretion in determining
75 whether it alone should examine prospective jurors or also allow the opposing parties to
76 do so. Subdivision (a) was amended, effective January 1, 1988, to provide for a uniform
77 jury selection process. However, this procedure is discretionary with the court.

78 Paragraph (a)(1) was amended, effective March 1, 2011, to provide a uniform jury
79 selection process for a 12-person jury, unless otherwise stipulated by the parties and
80 approved by the court.

81 Paragraph (a)(2) was amended, effective March 1, 2022, to require that the court
82 find on the record an overriding interest for courtroom closure before allowing an
83 individual examination of a prospective juror in chambers or a closed courtroom. The
84 court must apply the four factor pre-closure analysis required by *Waller v. Georgia*, 467
85 U.S. 39, 48 (1984) before making such a finding. *See State v. Martinez*, 2021 ND 42.

86 Subdivision (b) was amended, effective March 1, 1990. The amendments are
87 technical in nature and no substantive change is intended.

88 Subdivision (b) was amended, effective March 1, 2011, to interchange paragraphs
89 (b)(1) and (b)(2). Former paragraph (b)(1) became paragraph (b)(2), and former
90 paragraph (b)(2) became (b)(1).

91 Paragraph (b)(1), formerly paragraph (b)(2), regarding challenges for cause, is not
92 in the federal rules. This subsection is necessary to preclude any question that challenges
93 for cause are a definite part of the examination of prospective jurors. This rule also
94 obligates the judge to dismiss a prospective juror if grounds for cause exist, thereby
95 avoiding prejudicing other prospective jurors against the attorneys.

96 Paragraph (b)(1) was amended, effective March 1, 2019, to allow a challenge for
97 cause to be made only prior to a juror being sworn.

98 Paragraph (b)(2), formerly paragraph (b)(1), follows existing state law and
99 maintains the number of peremptory challenges historically allowed. The provision of
100 subdivision (b) that allows additional peremptory challenges in trials with multiple
101 defendants was an innovation of former practice.

102 Under paragraph (b)(2), a peremptory challenge is exercised by a party not in the
103 selection but rather in the rejection of prospective jurors. A peremptory challenge is not
104 aimed at disqualification, but is exercised against a qualified trial juror as a matter of
105 grace to the challenger. The right to peremptory challenges is afforded in aid of securing
106 a fair and impartial jury.

107 Subdivision (c) is taken from the federal rule and replaced superseded statutes.

108 Paragraph (c)(3) was amended, effective March 1, 2019, to allow retention of
109 alternate jurors after the jury retires to deliberate.

110 Rule 24 was amended, effective March 1, 2006, in response to the December 1,
111 2002, revision of the Federal Rules of Criminal Procedure. The language and
112 organization of the rule were changed to make the rule more easily understood and to
113 make style and terminology consistent throughout the rules.

114 SOURCES: Supreme Court Conference Minutes of January 17, 1990; September
115 28, 1987; Joint Procedure Committee Minutes of January 26, 2024, pages 8-9; April 29,
116 2021, pages 10-13; April 27, 2018, page 6; September 28, 2017, page 19; April 29-30,
117 2010, page 27; January 28-29, 2010, pages 16-19; January 27-28, 2005, pages 19-20;
118 April 20, 1989, page 4; December 3, 1987, page 15; May 21-22, 1987, pages 16-17;
119 February 19-20, 1987, pages 19-20; October 17-20, 1972, pages 12-18; September 26-27,
120 1968, pages 11-13; Fed.R.Crim.P. 24.

121 STATUTES AFFECTED:

122 SUPERSEDED: N.D.C.C. §§ 29-17-27 to 29-17-29, 29-17-31, 29-17-32, 29-17-
123 39, 29-17-40, 29-17-41, 29-17-42, 29-17-43, 29-17-47, 29-17-48, 29-21-35, 33-12-21.

124 CONSIDERED: N.D.C.C. §§ 27-09.1-01 to 27-09.1-22, 29-17-01 to 29-17-15, 29-
125 17-30, 29-17-33, 29-17-35, 29-17-36, 29-17-38, 29-17-44 to 29-17-46.

126 CROSS REFERENCE: N.D.R.Crim.P. 23 (Trial by Jury or by Court).

23 Rule 106 was amended, effective March 1, 2025, in response to the December 1,
24 2023, amendments to Fed.R.Ev. 106. According to the Committee Note, the federal rule
25 was amended in two respects: 1) if the existing fairness standard requires completion,
26 then that completing statement is admissible over a hearsay objection; and 2) the rule was
27 amended to cover all statements, including oral statements that have not been recorded.

28 SOURCES: Joint Procedure Committee Minutes of April 26, 2024, page 10;
29 January 26-27, 2012, page 31; March 24-25, 1988, page 12; December 3, 1987, page 15;
30 April 8, 1976, page 17; October 1, 1975, page 2. Fed.R.Ev. 106; Rule 106, SBAND
31 proposal.

32 CROSS REFERENCE: N.D.R.Ev. 611 (Mode and Order of Interrogation and
33 Presentation); N.D.R.Civ.P. 32 (Using Depositions in Court Proceedings) N.D.R.Crim.P.
34 15 (Depositions).

1
2 RULE 615. EXCLUDING WITNESSES FROM THE COURTROOM; PREVENTING
3 AN EXCLUDED WITNESS'S ACCESS TO TRIAL TESTIMONY

4 (a) Excluding Witnesses. At a party's request, the court must order witnesses
5 excluded from the courtroom so that they cannot hear other witnesses' testimony, or the
6 court may do so on its own. This rule does not authorize excluding:

7 (a1) a party who is a natural person;

8 (b2) ~~an~~ one officer or employee of a party that is not a natural person, ~~after~~
9 ~~being~~ if that officer or employee has been designated as the party's
10 representative by its attorney;

11 (c3) ~~a~~ any person whose presence a party shows to be essential to
12 presenting the party's claim or defense; or

13 (d4) a person authorized by law to be present.

14 (b) Additional Orders to Prevent Disclosing and Accessing Testimony. An order
15 under subdivision (a) operates only to exclude witnesses from the courtroom. But the
16 court may also, by order:

17 (1) prohibit disclosure of trial testimony to witnesses who are excluded
18 from the courtroom; and

19 (2) prohibit excluded witnesses from accessing trial testimony.

20 EXPLANATORY NOTE

21 Rule 615 was amended, effective March 1, 1990; March 1, 2014; March 1, 2020;
22 March 1, 2025.

23 Rule 615 is based on Fed.R.Ev 615. It provides that it is mandatory for a court to
24 exclude witnesses when so requested by a party, subject to stated exceptions.

25 Paragraph (a)(4), formerly §subdivision (d), was amended, effective March 1,
26 2020, to replace “statute” with “law.”

27 Rule 615 was amended, effective March 1, 1990. The amendments are technical in
28 nature and no substantive change is intended.

29 Rule 615 was amended, effective March 1, 2014, in response to the December 1,
30 2011, revision of the Federal Rules of Evidence. The language and organization of the
31 rule were changed to make the rule more easily understood and to make style and
32 terminology consistent throughout the rules. There is no intent to change any result in any
33 ruling on evidence admissibility.

34 Rule 615 was amended, effective March 1, 2025, in response to the December 1,
35 2023, amendments to Fed.R.Ev. 615. The amendments clarify: 1) the court may prohibit
36 excluded witnesses from learning about, obtaining, or being provided with trial
37 testimony; and 2) the exception from exclusion for entity representatives is limited to one
38 designated representative per entity.

39 SOURCES: Joint Procedure Committee Minutes of April 26, 2024, pages 10-11;
40 April 26, 2019, pages 7-8; September 28, 2018, pages 13-14; April 26-27, 2012, pages
41 27-29; March 24-25, 1988, page 12; December 3, 1987, pages 15-16; June 3, 1976, page
42 5; October 1, 1975, page 6. Fed.R.Ev. 615; Rule 615, SBAND proposal.

43 STATUTES AFFECTED:

44 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. §§ 12.1-34-02, 29-07-13, 29-

45 07-14.

RULE 2.2. TERMINATION OF PARENTAL RIGHTS - EXPEDITED APPEALS

(a) Filing Notice of Expedited Appeal. An appeal from an order terminating parental rights must be taken by filing a notice of expedited appeal with the clerk of the supreme court within 30 days after entry of the order. Extensions of time to file a notice of appeal under this rule are not permitted.

(b) Content of Notice of Appeal. The notice of appeal must:

- (1) specify the party or parties taking the appeal;
- (2) designate the order being appealed;
- (3) name the court to which the appeal is taken; and
- (4) indicate that an expedited appeal is requested.

(c) Motion for Temporary Stay and Specifications of Error. Any motion for a temporary stay of the order appealed from while the appeal is pending must be served and filed with the notice of appeal along with specifications of error specifying the grounds for appeal. Any stay granted by the district court remains valid only if a temporary stay request is filed with the supreme court with the notice of appeal. Once the supreme court acts on the stay request, any district court stay terminates.

(d) Record on Appeal. The record on appeal consists of the record required by Rule 10(a). A recording of the proceedings or an agreed statement of the case may substitute for the transcript.

(e) Briefs.

22 (1) Filing Time. The appellant’s brief must be filed with the notice of
23 appeal and must be served upon the opposing party at the time of filing.
24 The appellee’s brief must be served and filed no later than 21 days after
25 service of the appellant’s brief.

26 (2) Extensions. Extensions of time for filing briefs may not be granted
27 except in the most unusual circumstances and only for the most compelling
28 reasons in the interest of justice.

29 (f) Motions. Any motion, other than a motion for temporary stay, must be filed
30 within seven days after service of the notice of appeal. Any party may file a response in
31 opposition to a motion within seven days after service of the motion.

32 (g) Expedited Review. The supreme court must give priority to appeals under this
33 rule.

34 (h) Application of Other Rules. To the extent they are not inconsistent with this
35 rule, all other rules of appellate procedure apply.

36 EXPLANATORY NOTE

37 Rule 2.2 was adopted, effective March 1, 2009; amended, effective March 1,
38 2011; Oct 1, 2014; March 1, 2025. The explanatory note was amended, effective March
39 1, 2020.

40 All appeals from orders terminating parental rights must be made under this rule,
41 including appeals under N.D.C.C. ch. 14-15.1 on child relinquishment.

42 Subdivision (a) was amended, effective Oct 1, 2014, to provide for the filing of the
43 notice of appeal in the supreme court.

44 Subdivision (a) was amended, effective March 1, 2025, to clarify that extensions
45 of time to file the notice of appeal are not permitted.

46 Paragraph (e)(1) was amended, effective March 1, 2011, to increase the time to
47 serve and file an appellee’s brief from 15 to 21 days after service of the appellant’s brief.

48 Subdivision (f) was amended, effective March 1, 2011, to increase the time to file
49 a motion from five to seven days.

50 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, pages 2-
51 3; April 26, 2019, page 19; September 26, 2013, pages 13-14; April 29-30, 2010, page
52 20; April 24-25, 2008, pages 9-11.

53 STATUTES AFFECTED:

54 CONSIDERED: N.D.C.C. ch. 14-15.1.

RULE 35. SCOPE OF REVIEW

(a) Civil Appeals.

(1) Power of Court on Appeal. Upon an appeal from a judgment or order, the court may reverse, affirm, or modify the judgment or order as to any party. If the appeal is from a part of the judgment or order, the court may reverse, affirm, or modify that part of the judgment or order.

(2) Intermediate Orders. Upon an appeal from a judgment, the court may review any intermediate order or ruling which involves the merits and affects the judgment appearing upon the record.

(3) Order for New Trial or Determination of Issue.

(A) The court may order a new trial of the case or of an issue or issues.

(B) If an issue or issues have not been tried or, if tried, not determined, the court may remand the case to the district court for a determination of the issue or issues, without relinquishing jurisdiction of the appeal. In addition, the court may remand and retain jurisdiction in the interests of justice.

(i) The court may defer determination of the appeal until the issue or issues have been determined and certified to the court by the district court. The proceedings and the determination

22 of the district court, upon remand, are part of the record on
23 appeal.

24 (ii) Within 14 days of certification by the district court, a
25 party may request in writing supplemental briefing or oral
26 argument providing details of the specific additional
27 submissions or proceedings the party believes would be
28 useful to the court.

29 (4) Judgment or Decision of Court. The court must remit its final judgment
30 or decision to the district court from which the appeal was taken to be
31 enforced accordingly. If the appeal was from a judgment, the district court
32 must enter final judgment in accordance with the court's judgment or
33 decision, unless the court orders otherwise.

34 (b) Criminal Appeals.

35 (1) Power of Court on Review. Upon an appeal from a verdict, judgment, or
36 order, the court may reverse, affirm, or modify the verdict, judgment, or
37 order, and may do any of the following:

38 (A) set aside, affirm, or modify any or all of the proceedings
39 subsequent to or dependent upon the verdict, judgment, or order;

40 (B) order a new trial;

41 (C) remand the case, with proper instructions and its opinion, to the
42 district court. The court may retain jurisdiction in the interests of
43 justice.

44 (2) Intermediate Orders. Upon an appeal from a verdict, judgment, or order,
45 the court may review any intermediate order or ruling which involves the
46 merits or which may have affected the verdict or the judgment adversely to
47 the appellant.

48 EXPLANATORY NOTE

49 Rule 35 was amended, effective March 1, 2003; March 1, 2021; March 1, 2025.

50 The explanatory note was amended effective March 1, 2024.

51 Rule 35 incorporates in these rules statutes relating to the scope of review by the
52 Supreme Court in civil and criminal cases, all of which have been superseded.

53 Under N.D.R.Crim.P. 35 on correcting or reducing a sentence and N.D.R.Crim.P.
54 36 on clerical error, generally only the sentencing court may correct an illegal sentence or
55 a clerical error in a sentence. This rule confirms the supreme court has discretion to
56 correct a criminal sentence when an error is clear from the record.

57 Rule 35 was amended, effective March 1, 2003. The language and organization of
58 the rule were changed to make the rule more easily understood and to make style and
59 terminology consistent throughout the rules.

60 Paragraph (a)(3) was amended, effective March 1, 2021, to require a party seeking
61 additional briefing or oral argument after a remand to the district court to make a specific
62 request to the court.

63 SOURCES: Joint Procedure Committee Minutes of January 26, 2024, pages 12-
64 13; September 29, 2022, pages 8-9; April 24, 2020, pages 5-8; April 25-26, 2002, pages

65 17-18; May 25-26, 1978, page 18; March 16-17, 1978, pages 5-6; January 12-13, 1978,
66 page 24, N.D.C.C. §§ 28-27-28, 28-27-29, 29-28-27, and 29-28-28, N.D.C.C.

67 STATUTES AFFECTED:

68 SUPERSEDED: N.D.C.C. §§ 28-27-28, 28-27-29, 29-28-27, 29-28-28, 29-28-29,
69 and 28-27-31.

70 CROSS REFERENCE: N.D.R.Civ.P. 52(a) (Findings by the Court);
71 N.D.R.Crim.P. 35 (Correcting or Reducing a Sentence); N.D.R.Crim.P. 36 (Clerical
72 Error); N.D.C.C. § 29-28-35 (providing the supreme court's authority when the state
73 appeals in a criminal proceeding).

RULE 1.1. SCOPE

Consistent with subject matter jurisdiction, these rules apply to all trial courts of this state in all civil, criminal and juvenile cases, and to all appellate courts of this state unless a specific appellate rule, ~~Supreme Court~~ supreme court administrative rule, or ~~Supreme Court~~ supreme court order applies.

EXPLANATORY NOTE

Amended effective January 1, 1995; March 1, 1997; March 1, 2010; March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9; May 21-22, 2009, page 22; January 25-26, 1996, page 10; April 28-29, 1994, pages 17-18; November 7-8, 1991, pages 2-3.

RULE 3.2. MOTIONS

(a) Submission of Motion.

(1) Notice. Notice must be served and filed with a motion. The notice must indicate the time of the hearing, whether the hearing is for presenting evidence, oral argument, or both, or that the motion will be decided on briefs unless a hearing is timely requested.

(2) Briefs. Upon serving and filing a motion, the moving party must serve and file a brief and other supporting papers and the opposing party must have 14 days after service of a brief within which to serve and file an answer brief and other supporting papers. The moving party may serve and file a reply brief within seven days after service of the answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is considered submitted to the court unless counsel for any party requests a hearing on the motion.

(3) Requesting a hearing. If any party who has timely served and filed a brief requests a hearing, the request must be granted. A timely request for a hearing must be granted even if the moving party has previously served notice indicating that the motion is to be decided on briefs. The party requesting a hearing must secure a time for the hearing and serve notice upon all other parties. Requests for a hearing or the taking of evidence must be made not later than seven days after expiration of the time for filing the

23 answer brief. If the party requesting a hearing fails within 14 days of the
24 request to secure a time for the hearing, the request is waived and the matter
25 is considered submitted for decision on the briefs. If an evidentiary hearing
26 is requested in a civil action, notice must be served at least 21 days before
27 the time specified for the hearing.

28 (4) Self-Represented Prisoner. A self-represented prisoner who requests a
29 hearing is not required to secure a time for the hearing. Instead, the
30 prisoner's notice must include the request for oral argument, an evidentiary
31 hearing, or both, and a statement that the party is a self-represented
32 prisoner. On receipt of a prisoner's notice, the court will set a time for the
33 hearing and serve notice to the parties.

34 (b) Court hearing. The court may set a hearing on any motion. If permitted by the
35 court, a hearing may be held using contemporaneous audio or audiovisual transmission
36 by reliable electronic means. After reviewing the parties' submissions, the court may
37 require oral argument and may allow or require evidence on a motion.

38 (c) Failure to File Briefs. Failure to file a brief by the moving party may be
39 ~~deemed~~ considered an admission that, in the opinion of party or counsel, the motion is
40 without merit. Failure to file a brief by the opposing party may be ~~deemed~~ considered an
41 admission that, in the opinion of party or counsel, the motion is meritorious. Even if an
42 answer brief is not filed, the moving party must still demonstrate to the court that it is
43 entitled to the relief requested.

44 (d) Extension of Time. Extensions of time for filing briefs and other supporting
45 papers, or for continuance of the hearing on a motion, may be granted only by written
46 order of court. All requests for extension of time or continuance, whether written or oral,
47 must be accompanied by an appropriate order form.

48 (e) Time Limit for Filing Motion. Except for good cause shown, a motion must be
49 filed in such time that it may be heard not later than the date set for pretrial of the case.

50 (f) Application of Rule.

51 (1) Conflicting rules. This rule does not apply to the extent it conflicts with
52 another rule adopted by the ~~Supreme Court~~ supreme court.

53 (2) Probate code. This rule applies to formal proceedings under Uniform
54 Probate Code.

55 EXPLANATORY NOTE

56 Rule 3.2 was amended, effective September 1, 1983; March 1, 1986; January 1,
57 1988; March 1, 1990; January 1, 1995; March 1, 1997; March 1, 2002; March 1, 2005;
58 March 1, 2007; March 1, 2011; March 1, 2016; August 1, 2021; March 1, 2025.

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

62 Subdivision (a) was amended, effective January 1, 1995, to provide that a written
63 motion must be noticed, and that the notice must indicate that oral argument has been
64 requested or that the motion will be decided on briefs unless oral argument is requested.

65 In addition, the amendment shortened the time between the date a motion is filed and the

66 date a motion may be heard by eliminating the five-day period within which the moving
67 party's brief could be filed. Although the rule contemplates filing a brief with every
68 motion, what constitutes a brief should be liberally construed.

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

71 Paragraph (a)(2) was amended, effective March 1, 2011, to increase the time for
72 an opposing party to serve and file an answer brief from 10 to 14 days after service of the
73 moving party's brief. The time for a moving party to serve and file a reply brief was
74 increased from five to seven days after expiration of the time for filing the answer brief.

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

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

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

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

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

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

95 Paragraph (f)(2) was added, effective March 1, 2007, to specify that this rule
96 applies to formal proceedings under the Uniform Probate Code. N.D.C.C. § 30.1-01-
97 06(19) defines “formal proceeding” as “proceedings conducted before a judge with
98 notice to interested persons.”

99 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
100 January 28, 2021, pages 13-17; April 24, 2020, pages 3-4; January 30, 2020, pages 13-24;
101 September 26, 2019, pages 16-19; April 26, 2019, pages 27-28; April 23-24, 2015, page
102 6; January 29-30, 2015, pages 19-21; April 29-30, 2010, page 21; April 27-28, 2006,
103 pages 7-9, 17-19; January 26, 2006, pages 12-13; April 29-20, 2004, pages 25-26;
104 September 28-29, 2000, page 13; April 25, 1996, pages 8-11; January 25-26, 1996, pages
105 10-16; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-
106 24, 1993, pages 13-16; April 29-30, 1993, pages 20-22; April 20, 1989, pages 10-15;
107 March 24-25, 1988, pages 7-10 and 13-15; December 3, 1987, pages 4-5; February 19-
108 20, 1987, pages 21-22; June 22, 1984, page 30; April 26, 1984, pages 17-19.

109 STATUTES AFFECTED:

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

111 CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other
112 Papers); N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 7 (Pleadings Allowed—Form of Motions);
113 N.D.R.Civ.P. 56 (Summary Judgment); N.D.R.Crim.P. 45 (Time); N.D.R.Crim.P. 47
114 (Motions); N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.App.P. 27 (Motions);
115 N.D.R.App.P. 34 (Oral Argument); N.D. Sup. Ct. Admin. R. 52 (Contemporaneous
116 Transmission by Reliable Electronic Means).

RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Definitions.

(1) “Confidential” means information in a court record as described in Rule 3.4(b)(1) or as ordered by the court, which is protected from public access but remains accessible to the court and the parties.

(2) “Redact” means to remove confidential information from a court record to protect it.

(3) “Sealed” means court records that are protected from public access, party access and access by unauthorized court personnel.

(b) Redacted Filings.

(1) In General. Unless the court orders otherwise, ~~in an electronic or paper filing with the court~~ a court record that contains an individual’s social security number, taxpayer identification number, ~~or~~ birth date, the name of an individual known to be a minor, or a financial account number, including any credit, debit, investment or retirement account number, a party or nonparty making the filing must be redacted to include only:

(A) the last four digits of the social security number and taxpayer identification number;

(B) the year of the individual’s birth;

(C) the minor’s initials; ~~and~~

(D) the last four digits of the financial account number; and

23 ~~(2E) Victim Information.~~ If if a victim requests, all victim contact
24 information must be redacted from documents to be filed with the
25 court in a criminal or delinquency case.

26 ~~(b2)~~ Responsibility of Party or Nonparty to Redact. A party or nonparty
27 making a filing with the court is solely responsible for ensuring that
28 ~~protected~~ information required to be redacted under Rule 3.4(b)(1) does not
29 appear on the filing.

30 ~~(e3)~~ Exemptions from ~~the~~ Redaction Requirement. The redaction
31 requirement does not apply to the following:

32 ~~(1A) a financial account number or real property address that~~
33 ~~identifies the property allegedly subject to forfeiture in a forfeiture~~
34 ~~proceeding~~ any case record not accessible to the public under N.D.
35 Sup. Ct. Admin. R. 41(3)(b)(6) and (7);

36 ~~(2B)~~ the record of an administrative or agency proceeding;

37 ~~(3C)~~ the record of a court or tribunal, if that record was not subject
38 to the redaction requirement when originally filed;

39 ~~(4D)~~ a filing covered by Rule 3.4~~(d)~~c;

40 ~~(5) a court filing that is related to a criminal matter and that is prepared~~
41 ~~before the filing of a criminal charge or is not filed as part of any docketed~~
42 ~~criminal case;~~

43 ~~(6) an arrest or search warrant;~~

44 ~~(7) a charging document and a declaration filed in support of a charging~~
45 ~~document;~~

46 (8E) the name of an individual known to be a minor when the minor
47 is a party, including and there is no statute, regulation or rule
48 mandating nondisclosure;

49 (i) in a non-criminal traffic case;

50 (ii) in a change of name case;

51 (iii) in a minor conservatorship case;

52 (iv) named in a domestic violence protection order, disorderly
53 conduct restraining order or sexual assault restraining order;

54 (v) when the law requires the public disclosure of the minor's
55 full name; and/or

56 (vi) as otherwise ordered by the court.

57 (9F) a defendant's date of birth in a court filing that is related to
58 criminal matters, non-criminal motor vehicle and game and fish
59 matters, and infractions.

60 ~~(dc) Filings Made Under Seal~~ Procedure to Protect from Public Access.

61 (1) Parties may not seal otherwise public documents by consent or by
62 labeling them "sealed" or "confidential."

63 (2) Motion. A party may move that a filing be designated "confidential" or
64 "sealed." In its motion, the party must show that protection of the filing is
65 justified under the factors listed in N.D. Sup. Ct. Admin. R. 41(4)(a). A

66 motion to protect a filing from public access, the filing in question, and any
67 supporting documents, must be filed as “confidential” until the court makes
68 its ruling. A court record may not be designated “confidential” or “sealed”
69 under these rules when reasonable redaction will adequately resolve the
70 issues and protect the parties.

71 (3) The Court Order. On motion, or on its own, the court may order that a
72 filing be ~~made under seal without redaction~~ designated “confidential” or
73 “sealed.” The court may later ~~unseal~~ order that the filing be made public or
74 order the person who made the filing to file a redacted version for the
75 public record.

76 ~~(e) Protective Orders. For good cause, the court may by order in a case:~~

77 ~~(1) require redaction of additional information; or~~

78 ~~(2) limit or prohibit a nonparty’s remote electronic access to a document~~
79 ~~filed with the court.~~

80 ~~(f)~~ Filing a Confidential Information Form.

81 (1) In General. A filing that contains redacted information must be filed
82 together with a confidential information form (shown in Appendix H) that
83 identifies each item of redacted information and specifies an appropriate
84 identifier that uniquely corresponds to each item listed. The form will be
85 confidential except as to the parties or as the court may direct. Any
86 reference in the case to a listed identifier will be construed to refer to the
87 corresponding item of information.

88 (2) Defendant Information. In a criminal case, the prosecutor must file a
89 confidential information form that includes, when known, the defendant's
90 social security number.

91 (ge) Non-conforming Documents.

92 (1) Waiver. A person waives the protection of Rule 3.4(a)(b) as to the
93 person's own information by filing it without redaction ~~and not under seal~~
94 or without moving that the information be protected from public access.

95 (2) An individual may apply to the court to redact the individual's own
96 improperly included protected information from a filed document and the
97 clerk of court must temporarily restrict access to the document pending
98 order by the court.

99 (3) If the court finds protected information was improperly included in a
100 filed document, the court must restrict access to the document and may
101 order a properly redacted document to be filed.

102 ~~(2f) Sanctions. If a party fails to comply with this rule, the court on motion, of~~
103 ~~another party or on its own motion, may order the pleading or other document to be~~
104 ~~returned to the party for reformation prior to filing, with an extension of any deadline to~~
105 ~~complete the filing. If the document has been filed, and an order to reform is not obeyed,~~
106 ~~the court may order the document stricken. If a filer fails to comply with this rule, the~~
107 ~~court, upon its own motion or upon the motion of any party, may impose sanctions.~~

108 Sanctions may include:

131 decree to contain the social security numbers of the parties to the divorce. Under
132 subdivision (~~fd~~), a party to a divorce case may comply with this statute and the redaction
133 requirements of this rule by filing a confidential information form and a redacted version
134 of the decree in the public part of the file.

135 A new subdivision (a) was adopted, effective March 1, 2025, to add a definitions
136 section to the rule.

137 A new subdivision (b) was adopted, effective March 1, 2025, to consolidate the
138 rule's provisions relating to redaction.

139 ~~Subdivision (a)~~ Paragraph (b)(1), formerly paragraph (a)(1), was amended,
140 effective March 1, 2010, to eliminate the requirement to redact addresses in criminal
141 matters.

142 ~~Subdivision (a)~~ Subparagraph (b)(1)(E), formerly paragraph (a)(2), was ~~amended~~
143 adopted, effective May 1, 2017, to require, upon request of the victim, the redaction of all
144 victim contact information from documents before they may be filed with the court in a
145 criminal or delinquency case. This right is granted by N.D. Const. Art. I, § 25(1)(e).
146 “Victim” is defined in N.D. Const. Art. I, § 25(4).

147 ~~Subdivision (b)~~ Paragraph (b)(2), formerly subdivision (b), was adopted, effective
148 March 1, 2010, to indicate it is the responsibility of a party or nonparty making a court
149 filing to refrain from including ~~protected~~ information required to be redacted under
150 paragraph (b)(1) in the filing. The clerk of court is not required to review a document
151 filed with the court for compliance with this rule.

152 ~~Subdivision (e), formerly subdivision (b), was amended, effective March 1, 2010,~~
153 ~~to add a redaction exemption for the name of a minor when the minor is a party and there~~
154 ~~is no statute, regulation or rule mandating nondisclosure of the minor's name.~~

155 Subparagraph (b)(3)(E), formerly paragraph (c)(8), was amended, effective March
156 1, 2025, to list circumstances in which the full name of a minor who is a party must be
157 used.

158 ~~Subdivision (e), formerly subdivision (b)~~ Subparagraph (b)(3)(F), formerly
159 paragraph (c)(9), was amended, effective March 1, 2010, to add a redaction exemption
160 for a defendant's date of birth in a court filing that is related to criminal matters, non
161 criminal motor vehicle and game and fish matters, and infractions.

162 A new subdivision (c) was adopted, effective March 1, 2025, to clarify the process
163 for protecting a filing from public access.

164 ~~Subdivision (f)~~ Subdivision (d), formerly subdivision (f), was amended, effective
165 March 1, 2010, to require that state's attorneys file confidential information forms
166 containing certain defendant information when known.

167 ~~Subdivision (g)~~ Subdivision (e), formerly subdivision (g), was amended, effective
168 March 1, 2010, to allow courts to order reformation of documents not in conformity with
169 this rule prior to filing.

170 Subdivision (e) was amended, effective March 1, 2025, to allow individuals to
171 apply to the court to redact an individual's own improperly included protected
172 information.

173 Subdivision (f) was added, effective March 1, 2025, to provide more information
174 on sanctions available for noncompliance with this rule.

175 Rule 3.4 was amended, effective March 1, 2021, to delete the term “affidavit” and
176 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
177 15, which allows anyone to make an unsworn declaration that has the same effect as a
178 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
179 for an unsworn declaration.

180 SOURCES: Joint Procedure Committee Minutes of September 26, 2024, pages 8-
181 9; January 26, 2024, page 4; September 28, 2023, page 2; April 28, 2023, pages 2-5;
182 January 12, 2023, pages 2-3; September 30, 2021, page 10; April 29, 2021, pages 2-4;
183 January 28, 2021, pages 19-20; April 24, 2020, pages 4-5; January 26 27, 2017, page 22;
184 September 24 25, 2009, pages 3 7; May 21 22, 2009, pages 28 44; January 24, 2008,
185 pages 9 12; October 11 12, 2007, pages 28 30; April 26 27, 2007, page 31.

186 STATUTES AFFECTED:

187 CONSIDERED: N.D. Const. Art. I, § 25; N.D.C.C. ch. 31-15, § 14 05 02.1

188 CROSS REFERENCE: N.D.R.Ct. 3.1 (Pleadings); N.D. Sup. Ct. Admin. R. 41
189 (Access to Judicial Records).

RULE 5.1. INTERSTATE DEPOSITIONS AND DISCOVERY

(a) Definitions.

(1) “Foreign jurisdiction” means a state other than this state.

(2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

(b) Issuance of Subpoena.

23 (1) To request issuance of a subpoena under this section, a party must
24 submit a foreign subpoena to a clerk of court in the county in which
25 discovery is sought to be conducted in this state. A request for the issuance
26 of a subpoena under this rule does not constitute an appearance in the
27 courts of this state.

28 (2) When a party submits a foreign subpoena to a clerk of court in this state,
29 the clerk, in accordance with that court's procedure, ~~shall~~ will promptly
30 issue a subpoena for service upon the person to which the foreign subpoena
31 is directed.

32 (3) A subpoena under Rule 5.1(b)(2) must:

- 33 (A) incorporate the terms used in the foreign subpoena; and
- 34 (B) contain or be accompanied by the names, addresses, and
35 telephone numbers of all counsel of record in the proceeding to
36 which the subpoena relates and of any party not represented by
37 counsel.

38 (c) Service of Subpoena. Depending on the type of case involved, a subpoena
39 issued by a clerk of court under Rule 5.1(b) must be served in compliance with
40 N.D.R.Civ.P. 45(b), N.D.R.Crim.P. 17(d), or N.D.R.Juv.P. 13(b).

41 (d) Deposition, Production and Inspection. Depending on the type of case
42 involved, the discovery rules contained in the North Dakota Rules of Civil Procedure,
43 Criminal Procedure or Juvenile Procedure apply to subpoenas issued under Rule 5.1(b).

44 (e) Application to Court. An application to the court for a protective order or to
45 enforce, quash, or modify a subpoena issued by a clerk of court under Rule 5.1(b) must
46 comply with the rules or statutes of this state and be submitted to the court in the county
47 in which discovery is to be conducted.

48 EXPLANATORY NOTE

49 Rule 5.1 was adopted, effective March 1, 2013; amended March 1, 2025.

50 This rule is derived from the Uniform Interstate Depositions and Discovery Act. In
51 applying and construing this rule, consideration must be given to the need to promote
52 uniformity of the law with respect to its subject matter among states that enact it.
53 Reference to the uniform act and its commentary is appropriate when applying and
54 construing this rule.

55 ~~Sources~~ SOURCES: Joint Procedure Committee Minutes of September 28, 2023,
56 page 9; January 26-27, 2012, pages 3-7; September 30, 2011, pages 12-15; April 28-29,
57 2011, page 25.

58 ~~Cross Reference~~ CROSS REFERENCE: N.D.R.Civ.P. 45 (Subpoena):
59 N.D.R.Crim.P. 17 (Subpoena); N.D.R.Juv.P. 13 (Subpoena).

RULE 5.3. RECEIVERS

(a) Qualification of Receivers. Receivers ~~shall~~ must meet the qualifications set out by statute. See ~~Chapter N.D.C.C. ch. 32-10, North Dakota Century Code.~~

(b) Attorneys for Receivers. Application. An attorney for the receiver may be employed only upon order of the court, upon written motion of the receiver stating the reasons for the requested employment and naming the attorney to be employed, who must not be interested in the action as attorney for any party without the written consent of the opposing parties filed with the clerk.

(c) Inventories of Receivers. Not later than 30 days after his appointment, the receiver ~~shall~~ must file with the court a detailed report and inventory of all property, real or personal, of the estate, designating the property within his possession or control.

(d) Appraisal for Receivers.

(1) Appraisers. Appraisers for receivers may be appointed by the court.

(2) Appraisal by Receiver. If no appraisers are appointed, the receiver ~~shall~~ must investigate the value of the several items listed as disclosed by the investigation.

(e) Reports of Receivers.

(1) Time of Filing. The receiver ~~shall~~ must file one report each year, the first report 12 months after the appointment, and annually thereafter.

Special reports may be ordered by the court, and a final report must be filed upon the termination of the proceedings.

23 (2) Forms. The court may prescribe forms to be used for reports of a
24 receiver.

25 (3) Fee. Application for fees of a receiver or his attorney, except by leave of
26 the court, may be made only at the time of the filing of a receiver's report.

27 EXPLANATORY NOTE

28 The content of Rule 5.3 was transferred from Rule 8.1, effective March 1, 2013.
29 Amended effective March 1, 2025.

30 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

RULE 5.5. CIVIL COMPROMISE

(a) A defendant charged with a misdemeanor or infraction may enter into a civil compromise with the injured person under N.D.C.C. § 29-01-16.

(b) If a compromise is obtained, the defendant must provide notice to the court and serve the notice on all parties. Any objection must be filed within 14 days of service of the notice. The notice must be accompanied by:

(1) a declaration from the injured person acknowledging that the injured person has received satisfaction for the injury and consents to the discharge;

(2) a brief explaining that the legal requirements for a stay of the proceedings and discharge of the defendant have been satisfied in the matter; and

(3) a proposed order to stay proceedings and discharge the defendant from prosecution.

EXPLANATORY NOTE

Rule 5.5 was adopted effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of January 26, 2024, pages 6-7; April 28, 2023, pages 17-18.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. §§ 29-01-16, 29-01-17, 29-01-18, 29-01-19.

RULE 6.2. OPENING STATEMENTS

After the jury is impaneled and sworn and the trial is ready to proceed, counsel for the plaintiff may make an opening statement to the jury. Counsel for the defendant may immediately follow with an opening statement to the jury or defer it until the plaintiff has rested.

EXPLANATORY NOTE

Rule 6.2 was adopted effective July 1, 1981; explanatory note amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

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RULE 6.3. PARTIES' ORDER OF PROCEEDING

Unless otherwise ordered by the court, the parties ~~shall~~ will proceed in the order in which they appear in the pleadings. In consolidated cases, third-party proceedings, and all other cases not otherwise provided for, the court ~~shall~~ will designate the order.

EXPLANATORY NOTE

Rule 6.3 was adopted effective July 1, 1981; amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

RULE 6.6. BENCH WARRANT

Whenever a person fails to appear in court as duly required by an order to show cause, subpoena, or other process, the judge, upon being satisfied of the failure to appear, may order the clerk to issue a bench warrant directed to all peace officers of this state to bring the person before the court immediately or at a specified time and place ~~therein~~ specified. The warrant may be served by any peace officer in any county of this state in the same manner as an arrest warrant.

EXPLANATORY NOTE

Rule 6.6 was adopted effective March 1, 1986; amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9; March 28, 1985, page 6.

RULE 6.7. JUROR NOTE TAKING

The court may allow jurors to take notes during trial with supplies provided by the court. If note taking is allowed, the court ~~shall~~ must give a cautionary instruction informing the jurors:

(1) any notes must pertain to the case;

(2) extensive note taking may distract them from properly fulfilling their function; and

(3) they should rely primarily on their collective recollection of what was seen and heard, and not on any particular juror's notes.

If the court directs, all notes taken must be returned after deliberation and destroyed.

EXPLANATORY NOTE

Rule 6.7 was adopted, effective March 1, 1998; amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9; January 30, 1997, page 9; September 26-27, 1996, page 19.

RULE 6.8. QUESTIONING BY JURY

In a civil case, the trial court may allow a juror to submit a question to be asked of a witness. The question must be in writing and delivered to the judge through appropriate court personnel. Upon receipt of a question, the court ~~shall~~ must review with counsel on the record but outside the hearing of the jury, the propriety of submitting the question to the witness. If the court ~~deems~~ considers it appropriate, the court ~~shall~~ will then ask the question. The parties ~~shall~~ must have an opportunity to examine matters touched upon by any juror question submitted to a witness, subject to the North Dakota Rules of Evidence. If the question is not asked, the court ~~shall~~ must tell the jury the law prevented the question from being asked.

EXPLANATORY NOTE

Rule 6.8 was adopted, effective March 1, 1998; amended effective March 1, 2025.

~~Sources~~ SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9; September 25-26, 1997, pages 2-3; January 30, 1997, pages 14-15.

RULE 6.11. PREDELIBERATION DISCUSSION BY JURORS

(a) Civil Case. In a civil case, the court may, without objection, allow the jury to engage in predeliberation discussion.

(1) Discussion Jury. If the court allows predeliberation discussion, at each adjournment, the court ~~shall~~ must admonish the jurors:

(A) to only discuss the evidence among themselves in the jury room during recess from trial when all the jurors are present; and

(B) to reserve judgment about the outcome of the case until deliberations commence.

Any alternate juror must be allowed to participate in any predeliberation discussion.

(2) No Discussion Jury. If the court prohibits predeliberation discussion, at each adjournment, the court ~~shall~~ must admonish the jurors:

(A) not to converse among themselves nor with anyone else on any subject connected with the trial; and

(B) not to form or express an opinion until the case is submitted to them for deliberation.

(b) Criminal Case. In a criminal case, the court must prohibit the jury from engaging in predeliberation discussion. At each adjournment, the court ~~shall~~ must admonish the jurors:

RULE 7.1. JUDGMENTS, ORDERS AND DECREES

(a) Preparation of Orders and Decrees-Presentation of Drafts. Whenever the court makes a ruling other than in the course of trial, the attorney for the prevailing party must prepare and present to the court the order, order for judgment, or decree to be entered, unless the court directs otherwise. All proposed orders and judgments must be filed with the clerk.

(b) Preparation of Findings of Fact and Conclusions of Law.

(1) Preparation by One or More Parties. Preparation of proposed findings of fact and conclusions of law under N.D.R.Civ.P. 52(a) may be assigned by the court to one or more parties. Any findings of fact and conclusions of law prepared by one or more parties must be served upon all other parties for review and comment. A party may file and serve a response in writing, within 14 days of service, or such other time as the court, in its discretion, may allow. All proposed findings of fact and conclusions of law must be filed with the clerk. The court must thereafter enter findings of fact and conclusions of law as it ~~may deem~~ considers appropriate.

(2) Preparation by Court. If the court chooses to prepare its own findings of fact and conclusions of law, the parties may, in the discretion of the court, be allowed to submit and file proposed findings of fact and conclusions of law within the time specified by the court for that purpose. The court may consider such proposed findings of fact and conclusions of law submitted

23 and filed by the parties, and may adopt, modify, or reject any proposed
24 findings of fact or conclusion of law regardless of who submitted and filed
25 it with the court.

26 (3) Amendment of Findings. Nothing contained in this Rule of Court
27 affects the right of any party to move the court for an order amending the
28 findings of fact finally entered by the court or to make additional findings,
29 under N.D.R.Civ.P. 52(b).

30 (c) If a party prepares documents under this rule, copies must be served upon all
31 other parties.

32 (d) Satisfaction of Judgment for Money When Judgment Creditor Cannot Be
33 Found.

34 (1) Satisfaction by Motion. A judgment for money may be satisfied by the
35 court, if no execution is outstanding and the time for appeal has expired, as
36 follows:

37 (A) The judgment debtor may file a motion for satisfaction with the
38 court, supported by a declaration executed by the judgment debtor or
39 the judgment debtor's attorney stating the following:

40 (i) the amount of the original judgment and the judgment
41 balance, and accrued interest and costs due the judgment
42 creditor;

43 (ii) that after the exercise of due diligence the judgment
44 creditor and the judgment creditor's attorney cannot be found

45 or that the judgment creditor or the judgment creditor's
46 attorney has failed or refused to deliver a satisfaction of
47 judgment upon being tendered or paid the amount due; and
48 (iii) that notice of the motion has been sent by mail or third-
49 party commercial carrier to the judgment creditor and the
50 judgment creditor's attorney at their respective last-known
51 addresses.

52 (B) Upon granting the motion, the court ~~shall~~ must enter an order
53 directing the clerk to receive the amount due on the judgment with
54 accrued interest and costs for the judgment creditor. After payment,
55 the court must enter an order satisfying the judgment and showing
56 the amount deposited with the clerk.

57 (C) For purposes of this rule, the word "judgment" includes a decree
58 for payment of money upon which execution could issue.

59 (2) Satisfaction by Declaration. A judgment for money may be satisfied by
60 the clerk of the court in which the judgment was rendered, if no execution
61 is outstanding and the time for appeal has expired, as follows:

62 (A) The judgment debtor or the judgment debtor's attorney may
63 execute and file a declaration for satisfaction with the clerk stating
64 the following:

65 (i) the amount of the original judgment and the judgment
66 balance, and accrued interest and costs due the judgment
67 creditor;
68 (ii) that the judgment debtor desires to pay the amount due on
69 the judgment; and
70 (iii) that after the exercise of due diligence the judgment
71 creditor and the judgment creditor's attorney cannot be found
72 or that the judgment creditor or the judgment creditor's
73 attorney has failed or refused to deliver a satisfaction of
74 judgment upon being tendered the amount due.

75 (B) Upon receipt of the declaration and payment of the amount due
76 on the judgment with accrued interest and costs for the judgment
77 creditor, the clerk must:

78 (i) note satisfaction of the judgment on the judgment docket
79 and on the register of the action in which the judgment was
80 entered;
81 (ii) execute under the seal of the court and deliver to the
82 judgment debtor a certificate reciting that the amount paid in
83 satisfaction of the judgment, with accrued interest and costs,
84 has been received and that the judgment has been fully paid
85 and satisfied; and

86 (iii) notify all persons of record in the action appearing to
87 have any interest in, or lien upon, the judgment, including the
88 attorney of record for the original judgment creditor, that the
89 clerk has received the amount due on the judgment and that
90 the judgment has been satisfied of record. The notice must be
91 in writing and must be given by certified or registered mail to
92 the last-known post office address of each of the persons
93 entitled to receive the notice. The clerk must file the receipts
94 for mailing the notice with the other papers in the action.

95 (C) Upon demand, the clerk must pay the amount received in
96 satisfaction of the money judgment, with accrued interest and costs,
97 to the person entitled to receive payment of the judgment amount.

98 The clerk must take duplicate receipts for payment, one to be held by
99 the clerk and one to be filed with the other papers in the action.

100 (D) A satisfaction of judgment entered by a clerk before the time for
101 appeal has expired is void and without prejudice to a judgment
102 creditor or the judgment creditor's assigns.

103 EXPLANATORY NOTE

104 Rule 7.1 was amended, effective March 1, 1994; March 1, 1999; March 1, 2003;
105 March 1, 2011; March 1, 2021; March 1, 2025.

106 Rule 7.1 was amended, effective March 1, 1994, in response to *GeoStar Corp. v.*
107 *Parkway Petroleum, Inc.*, 495 N.W.2d 61, 65-66 (N.D. 1993) and *Disciplinary Action*

108 Against Wilson, 461 N.W.2d 105 (N.D. 1990). The amendment to subdivision (a)
109 requires the prevailing party to prepare a draft of the order or decree whenever the court
110 makes a ruling other than in the course of trial. Former subdivision (a) also required the
111 prevailing party to prepare drafts of the order, order for judgment, or decree to be entered,
112 whenever the court made a final determination in an action.

113 Rule 7.1 was amended, effective March 1, 2011, to require a party who submits
114 proposed orders, judgments, findings of fact or conclusions of law to the court to file
115 these proposals with the clerk.

116 Subdivision (b) was amended, effective March 1, 2021, to clarify that a party may
117 file and serve a response to proposed findings of fact and conclusions of law. New
118 subdivisions (b) and (c) were added. Former subdivision (b) was changed to subdivision
119 (d). New subdivision (b) concerns the preparation of findings of fact and conclusions of
120 law under Rule 52(a), N.D.R.Civ.P. New subdivision (c) was added to provide notice to
121 all parties and to prevent ex parte contact with the court.

122 Paragraph (b)(1) was amended, effective March 1, 2011, to increase the time to
123 serve a response to proposed findings of fact and conclusions of law from 10 to 14 days.

124 Subdivision (d) was amended, effective March 1, 1999, to allow a notice of the
125 motion to satisfy to be sent via commercial carrier as an alternative to mail.

126 Subdivision (d) was amended, effective March 1, 2003, to incorporate the
127 provisions of N.D.C.C. § 28-20-28, which permit a money judgment to be satisfied upon
128 payment of the amount due to the clerk of the court in which the judgment was rendered
129 without filing a motion for satisfaction with the court. The amendments permit a

130 judgment debtor to satisfy a judgment for money by either filing a written motion for
131 satisfaction with the court and paying the amount due upon entry of an order of
132 satisfaction, or by paying the amount due to the clerk and receiving from the clerk a
133 certificate of satisfaction.

134 Rule 7.1 was amended, effective March 1, 2021, to delete the term “affidavit” and
135 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
136 15, which allows anyone to make an unsworn declaration that has the same effect as a
137 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
138 for an unsworn declaration.

139 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
140 April 24, 2020, pages 4-5; September 26, 2019, pages 12-15; September 23-24, 2010,
141 page 26; April 29-30, 2010, page 21; January 24-25, 2002, pages 5-7; September 27-28,
142 2001, page 18; January 29-30, 1998, page 22; April 29-30, 1993, page 11; January 28-29,
143 1993, pages 9-10.

144 STATUTES AFFECTED:

145 SUPERSEDED: N.D.C.C. § 28-20-28.

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

147 CROSS REFERENCE: N.D.R.Civ.P. 52 (Findings by the Court) and
148 N.D.R.Civ.P. 60 (Relief From Judgment or Order).

RULE 7.2. RECOGNITION OF TRIBAL COURT ORDERS AND JUDGMENTS

(a) Policy. Under ~~Article VI, Section 3, of the North Dakota Constitution~~ N.D. Const. art. 1, § 3, the policy of the North Dakota Judicial System is that the Indian tribes in this state are considered the equivalent of foreign nations for the purposes of recognizing the orders and judgments of the tribal courts in this state. This policy and rule are to promote justice, to encourage better relations between the tribes of this state and the state of North Dakota, and to encourage reciprocal action by the tribes of this state. This policy and rule apply to courts of record of the state of North Dakota and courts in this state of the federally recognized Indian nations, tribes, or bands, including courts of Indian offenses.

(b) Recognition.

(1) In General. The judicial orders and judgments of tribal courts within the state of North Dakota, unless objected to, are recognized and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments of any court of record in this state.

(2) Objection. If recognition of a judgment is objected to by a party, the recognizing court must be satisfied, upon application and proof by the objecting party with respect to ~~subsections 1 through 5~~ subparagraphs (A) through (E), that the following conditions are present:

(+A) The tribal court had personal and subject matter jurisdiction;

RULE 8.1. FAMILY MEDIATION PROGRAM

(a) Purpose.

(1) Mission Statement. The mission of the Family Mediation Program is to provide a high quality, impartial, and efficient forum for resolving disputed parental rights and responsibilities matters through mediation.

(2) Goal. The goal of the program is to improve the lives of families and children who appear before the court by trying to resolve parental rights and responsibilities disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members.

(3) The objectives of the program are:

(A) to support improved parental decision-making and to promote agreement and compromise in place of litigation over parenting rights and responsibilities and to conserve limited family resources in family cases;

(B) to improve access to mediation by providing funding for the limited time frame of the program;

(C) to improve parental problem-solving and communication capacities;

(D) to create incentives to pursue mediation including flexibility to negotiate critical issues without judicial intervention;

- 23 (E) to determine best practices for family mediation in North
- 24 Dakota;
- 25 (F) to improve rural access to mediation services, as well as access
- 26 by underprivileged and minority persons;
- 27 (G) to work with the domestic violence services community in order
- 28 to assess risk and provide services where appropriate; and to ensure
- 29 proper protections are put in place and mediators are well trained in
- 30 signposts, risks, and exit planning strategies;
- 31 (H) to reduce post-decree litigation and conflict in family cases;
- 32 (I) to provide ethical standards for mediators in order to encourage
- 33 high quality family mediation practice; and
- 34 (J) to help the public, judiciary, and bar become more aware of the
- 35 benefits and nature of the mediation process;

36 (4) Scope and Definition. Rule 8.1 governs mediation in parental rights and
37 responsibilities disputes in the district courts. “Mediation” is a process by
38 which a non-judicial neutral mediator facilitates communication between
39 parties to assist the parties in reaching voluntary decisions related to their
40 dispute. A case evaluation or settlement conference under N.D.R.Civ.P. 16
41 is not “mediation” under Rule 8.1. To the extent the requirements of
42 N.D.R.Civ.P. 16(b) and N.D.R.Ct. 8.3(b) conflict with Rule 8.1, Rule 8.1’s
43 provisions control. The N.D.R.Ct. 8.8 alternative dispute resolution
44 statement requirement is satisfied by compliance with Rule 8.1.

45 (b) Program Management.

46 (1) A full-time administrator will manage and oversee the operation of the
47 program under the auspices of the ~~Supreme Court~~ supreme court.

48 (2) The program administrator will directly report to the state court
49 administrator and will act as a liaison to the district courts, the Joint
50 Committee on Alternative Dispute Resolution, and the Subcommittee on
51 Family Mediation.

52 (3) The program administrator will be a state employee and compensated at
53 a rate commensurate with market value and state policies.

54 (4) Research and Evaluation. The program will include a research and
55 evaluation component.

56 (c) Mediation Process.

57 (1) Clerk Referral to Family Mediation. Within 10 days of filing, the
58 following new cases will be referred by the district court clerk to the
59 program administrator:

60 (A) any civil proceeding in which there is a dispute or an unresolved
61 issue regarding parental rights and responsibilities, relocation of a
62 child, or grandparent visitation, including an original proceeding for
63 a divorce, separation, or paternity in which the issue may appear.

64 (B) a post-judgment proceeding to modify parental rights and
65 responsibilities, requesting to remove a child from the state, or
66 seeking grandparent visitation, but if the proceeding is to modify

67 parental rights and responsibilities, a referral to mediation will be
68 made only after a court order has determined that a prima facie case
69 under N.D.C.C. § 14-09-06.6 has been established, and if the court
70 believes mediation may be useful to the parties and the children.

71 (2) Referral of Guardianship Proceedings.

72 (A) any party to a guardianship proceeding may request a referral to
73 family mediation as provided in (c), except as prohibited by this or
74 any other rule or statute. Such requests ~~shall~~ must be made during
75 the initial appearance phase of the juvenile guardianship proceeding.
76 When such a request is made, the district judge or referee ~~shall~~ must
77 direct the program administrator to assign a mediator to the case, and
78 prepare an order and schedule for mediation.

79 (3) Court Referral. A district judge or referee assigned to a parental rights
80 and responsibilities proceeding may at any time refer the case to family
81 mediation, except as prohibited by this or any other rule or statute.

82 (4) Exclusions from Referral. A proceeding may not be referred to family
83 mediation if:

84 (A) the proceeding involves termination of parental rights;

85 (B) the parties have already started mediating prior to filing the
86 proceeding;

87 (C) parental rights and responsibilities are stipulated by the parties at
88 the time of filing; or

89 (D) a current domestic violence protection order or other order for
90 protection between the parties exists, unless:

91 (i) mediation is requested by the victim of the domestic
92 violence or sexual abuse, and an exception to the order of
93 protection is made by the court;

94 (ii) the mediation is provided by a mediator trained to address
95 the needs and safety of victims where domestic violence is at
96 issue;

97 (iii) the victim of domestic violence is provided the
98 opportunity for separate meetings during the mediation, and
99 to mediate using separate rooms;

100 (iv) the mediation takes place in a courthouse or other
101 building where security measures are in place; and

102 (v) the victim has an advocate or support person of their
103 choice in the mediation.

104 The Rule 8.1(c)(3)(D) exclusion and exceptions are intended to
105 comply with the N.D.C.C. § 14-09.1-02 standards for family
106 mediation.

107 (5) Mediation in General.

108 (A) The program will automatically provide up to six hours of
109 combined pre-mediation orientation and mediation. Mediators will

110 be compensated at a rate to be set annually by the state court
111 administrator.

112 (B) Under the program, the parties will individually attend a pre-
113 mediation orientation and screening with a designated mediator, and
114 at least one joint mediation session. Counsel for represented parties
115 may participate in mediation proceedings.

116 (C) If the parties require more than six hours of sessions, they may
117 purchase additional mediation sessions from the mediator, who will
118 offer mediation at the hourly rate set annually by the state court
119 administrator.

120 (D) Parties may also apply to the program administrator for
121 additional mediation sessions using Form B and may apply for a fee
122 waiver or sliding scale fee using Form C. The program administrator
123 will determine whether a party is eligible for a fee waiver or fee
124 reduction based on party income according to a schedule adopted by
125 the ~~Supreme Court~~ supreme court. If the parties qualify for a fee
126 reduction and have been approved for additional mediation, any gap
127 between the hourly rate set annually by the state court administrator
128 and the parties' ability to pay will be paid to the mediator under this
129 program.

130 (d) Mediation Procedure.

131 (1) Order and Schedule. The order and a copy of Form D, Guide to
132 Participants in Mediation, must be sent to the parties, attorneys, and the
133 mediator, setting the following time frame for the mediation to take place:

134 (A) the parties must contact the mediator and attend a pre-mediation
135 orientation separately within 10 days of the date of the mediation
136 scheduling order for guardianship proceedings and 20 days of the
137 date of the mediation scheduling order for all other proceedings;

138 (B) the mediation sessions must take place within 50 days of the date
139 of the mediation scheduling order for guardianship proceedings and
140 120 days of the date of the mediation scheduling order;

141 (C) any requests to deviate from this time frame must be submitted
142 to the judge presiding over the case in writing by the mediator and
143 the parties, and the judge may allow a time extension for good cause.

144 (2) Case Management. Once a case is assigned, the mediator will manage
145 the case and report to the court as required by Rule 8.1. If any party fails to
146 appear for orientation or mediation sessions, the mediator must promptly
147 notify the court, which may order the party to show cause for failure to
148 appear. The mediation process is not a stay on any interim process.

149 (3) Pre-Mediation Orientation. The program will provide a mediation
150 orientation session for all parties in cases assigned for mediation. The
151 orientation sessions must be provided to the parties separately by the
152 assigned mediator in a way that best meets the needs of the parties. The

153 parties will receive a copy of Form E, How to Prepare for Mediation, as
154 part of the orientation. Prior to the orientation, the mediator should study
155 Supplement 1, Components of Mediation Orientation. Form F, the Mediator
156 Domestic Violence Screening Tool and Safety Planning, is also intended to
157 assist the mediator during orientation. The orientation session should be
158 designed to make the parties aware of important mediation factors
159 including:

- 160 (A) what mediation is and is not;
- 161 (B) what to expect from the mediators;
- 162 (C) what the parties' goals are for mediation;
- 163 (D) any guidelines necessary to have constructive conversations;
- 164 (E) how to prepare for the mediation process;
- 165 (F) the role of the court, lawyers, and other experts;
- 166 (G) how fee payment works;
- 167 (H) the time line for mediation;
- 168 (I) any relevant requirements of the program.

169 (e) Selection of Mediators.

170 (1) Qualifications. In order to mediate within the program, mediators must
171 meet the criteria set forth in Rule 8.9 or have a minimum of 40 hours of
172 mediation training and four years of experience in family mediation, with
173 an average of six cases per year. Mediators must carry malpractice
174 insurance that covers their mediation practice. Mediators may apply to be

175 placed on the roster of family mediators in the manner indicated in Rule
176 8.9. The program administrator has discretion to approve mediators for
177 placement on the roster.

178 (2) Mediation Assignment. Mediators will be assigned cases by the
179 program administrator and will manage cases assigned to them from
180 orientation and screening through conclusion of mediation.

181 (3) Conflicts of Interest and Bias. A mediator may not be removed unless
182 the mediator or the parties' petition the program administrator based upon
183 bias or conflicts of interest. Parties and attorneys may not request a change
184 of mediator unless they present clear evidence of bias or conflict of interest
185 as described in Supplement 2, the ABA Model Standards of Practice for
186 Family and Divorce Mediation.

187 (4) Standards. All mediators must agree to follow the standards in
188 Supplement 2. Any violation of standards may be reported to the program
189 administrator.

190 (5) Confidentiality. The program requires the highest ethical standards,
191 including confidentiality. Mediators may not discuss or reveal the details of
192 any mediation proceeding or any information provided by a party in a
193 mediation proceeding to any judge, magistrate, or third party. See Rule
194 8.8(b) (Alternative Dispute Resolution Procedure); N.D.C.C. § 14-09.1-06
195 (Confidentiality); N.D.C.C. § 31-04-11 (Mediation - Inadmissibility of
196 evidence - Exception).

197 (f) Program Evaluation. All mediators and parties must cooperate with the
198 research and evaluation protocol to help measure the impact and success of the program.
199 This may include providing written comments, participating in a personal interview, and
200 allowing occasional observation during mediation if the parties approve.

201 (g) Concluding Mediation.

202 (1) The mediator must notify the program administrator when the mediation
203 has concluded for any reason, and advise the judge presiding over the case
204 of one of the following outcomes:

205 (A) agreement has been reached in whole or part; or

206 (B) the parties were unable to reach agreement.

207 (2) If the parties reach agreement, the mediator and parties must prepare a
208 written summary for the parties to sign noting all agreements made and
209 using the parties' own words. A copy of the signed summary must be given
210 to each party.

211 (3) The parties have seven days from receiving the summary to reconsider
212 the decisions made in mediation. If neither party sends a written request to
213 reconsider to the mediator within seven days, the mediator must send a
214 final copy of the written summary to the parties and their attorneys, and file
215 the mediation closing form (Form G) with the clerk of court with a copy to
216 the judge presiding over the case.

217 (4) At the close of the case the mediator and the parties must complete the
218 required evaluation forms. The mediator must submit the forms to the

219 program administrator along with a copy of the closing form, mediator's
220 log and the mediator's invoice. The mediator is responsible for collecting
221 fees from the parties for additional mediation sessions not paid by the court.

222 EXPLANATORY NOTE

223 Rule 8.1 was adopted, effective January 1, 2014, and amended effective March 1,
224 2016; March 1, 2025.

225 Subdivision (b) was amended, effective March 1, 2016, to remove language no
226 longer relevant to the mediation program.

227 Subdivisions (c) and (d) were amended, effective September 1, 2020, to conform
228 this rule to the Juvenile Court Rules.

229 Paragraph (d)(1) was amended, effective March 1, 2016, to permit the program
230 administrator to prepare an order and schedule for mediation under the authority of the
231 assigned judge; and subparagraph (d)(1)(B) increased the length of time allowed for
232 completion of the mediation from 90 to 120 days to allow parties to gather necessary
233 information to prepare for the mediation.

234 Paragraph (d)(2) was amended, effective March 1, 2016, to provide for notice to
235 the assigned judge of a party failing to appear for orientation or mediation sessions.

236 Rule 8.1 contains the former content of N.D.Sup.Ct.Admin.O. 17, which was
237 adopted effective March 1, 2008, and amended, effective September 1, 2010 and March
238 1, 2011. The order was converted to a rule to reflect the program's transition from pilot
239 status.

240 ~~Sources~~ SOURCES: Joint Procedure Committee Minutes of September 28, 2023,
241 page 9; April 29-30, 2010, page 21.

242 STATUTES AFFECTED:

243 CONSIDERED: N.D.C.C. §§ 14-09-06.6, 14-09.1-02, 14-09.1-06, 31-04-11.

244 CROSS REFERENCE: N.D.R.Civ.P. 16 (Pretrial Conferences; Scheduling;
245 Management); N.D.R.App.P. 5 (Post-Judgment Mediation); N.D.R.Ct. 8.3 (Case
246 Management), N.D.R.Ct. 8.8(Alternative Dispute Resolution), N.D.R.Ct. 8.9 (Roster of
247 Alternative Dispute Resolution Neutrals).

RULE 8.2. INTERIM ORDERS IN DOMESTIC RELATIONS CASES

(a) Ex Parte Interim Order.

(1) No interim order may be issued except on notice and hearing unless the court specifically finds exceptional circumstances. Exceptional circumstances include:

(A) threat of imminent danger to any party or minor child of the party; or

(B) circumstances indicating that an ex parte interim order is necessary to protect the parties, any minor children of the parties, or the marital estate.

(2) No ex parte interim order may be issued unless the moving party executes a declaration setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the moving party also appears personally and good cause is shown for issuance of the order.

(3) An ex parte interim order may include provisions relating to temporary parental rights and responsibilities, support and other appropriate expenses, use of real or personal property, restraining and eviction.

(4) If there has been an appearance in the action by the opposing party, or if the attorney for the moving party has knowledge that the opposing party is represented by an attorney, the attorney for the moving party must notify

23 the court. After receiving notice of the appearance or representation, the
24 court must attempt to hold an emergency hearing, either in person or by
25 telephonic conference, at which both parties may be heard, before issuing
26 any order. The issuance of an order following an emergency hearing will in
27 no manner affect a party's right to a further hearing on the merits of the
28 order as provided in Rule 8.2(a)(5).

29 (5) An ex parte interim order must specifically provide:

30 (A) that a hearing upon the necessity for the issuance of the order or
31 the amounts to be paid be held within 30 days of the issuance of the
32 ex parte interim order, unless an earlier hearing is required under
33 N.D.C.C. ch. 14-07.1, or an application for change of venue is
34 pending. If the ex parte interim order contains provisions delineated
35 in N.D.C.C. ch. 14-07.1, the hearing must be scheduled in a timely
36 manner under the chapter;

37 (B) that the party obtaining the ex parte interim order must secure a
38 hearing date and personally serve the ex parte interim order and a
39 notice of hearing on the opposing party; and

40 (C) that the hearing on the ex parte interim order may be waived if
41 the opposing party files a written waiver with the court no later than
42 two days before the hearing date. The written waiver must be served
43 on the moving party.

44 (6) The ex parte interim order remains in effect until it is amended
45 following a court hearing.

46 (7) An ex parte interim order modifying parenting time may be issued
47 postjudgment.

48 (8) No ex parte interim order modifying primary residential responsibility
49 may be issued postjudgment.

50 (b) Interim Orders on Motion and Hearing.

51 (1) Support. An interim order may provide for payment of support and
52 other appropriate expenses. In the event support is ordered, a current
53 mailing address must be listed for both parties.

54 (2) Parental Rights and Responsibilities. An interim order providing for
55 temporary parental rights and responsibilities and a parenting schedule of
56 minor children may be granted, in which case the order must provide for
57 reasonable parenting time, unless the evidence establishes that parenting
58 time should be restricted to certain times and places or prohibited.

59 (3) Attorney's Fees and Costs. An interim order may provide for payment
60 of attorney's fees and costs if evidence establishes that a party has
61 insufficient personal income or funds with which to pay attorney's fees and
62 costs.

63 (4) Use of Property. An interim order may provide for the use of real or
64 personal property, and for restraining and eviction.

65 (5) An interim order may not be amended except upon stipulation of the
66 parties or in the event of a material change of circumstances.

67 (6) Payment. The interim order must provide for any spousal support
68 payment, child support payment, or combined payment of child support and
69 spousal support, to be paid to and through the State Disbursement Unit.
70 Payment must be in a manner acceptable to the State Disbursement Unit
71 unless otherwise ordered by the court.

72 (7) Time for Hearing Upon Notice. If a notice of motion and motion are
73 served to obtain an interim order, the court ~~shall~~ must hold a hearing no
74 later than 30 days from the date of filing the motion. If venue is changed
75 before the hearing for an interim order is held, the hearing for an interim
76 order must be held no later than 30 days after venue is changed.

77 (c) Motions for Temporary Modification of Residential Responsibility.

78 (1) No interim orders to modify residential responsibility may be heard
79 unless the moving party files a motion to modify residential responsibility
80 under N.D.C.C. § 14-09-06.6 and Rule 3.2 and a motion for a temporary
81 modification of residential responsibility under this rule and demonstrates
82 the following:

83 (A) that there exists a threat of imminent danger to a minor child of
84 the party; or

85 (B) that there are present circumstances indicating that an interim
86 order is necessary to protect a minor child of the parties; and

87 (C) that good cause exists for the court to issue an order setting the
88 matter on for hearing on shorter notice than provided under these
89 rules and that a waiver for the requirements of Rule 8.3.1 is
90 necessary.

91 If the moving party is able to demonstrate that the above criteria are met,
92 the court must notify the parties and schedule the matter for a hearing on
93 shortened notice as soon as possible. If the court does not find that the
94 moving party has met the criteria for an interim order the parties will be
95 notified to proceed under Rule 8.3.1.

96 (2) Motions requesting a temporary modification of residential
97 responsibility must include the following notice:

98 PLEASE TAKE NOTICE that the moving party has requested
99 expedited review of this Motion for Temporary Modification of Residential
100 Responsibility and has requested that the court hold a hearing on this matter
101 immediately. If the court grants a hearing on this motion, you will receive a
102 Notice of Hearing with the specific time and date of the hearing. Any
103 response to the motion for interim order must be received at least 24 hours
104 in advance of the time scheduled for the hearing.

105 (d) Submission of Evidence.

106 (1) Financial Statement. In any proceedings under this rule, each party must
107 file an itemized financial statement prepared as illustrated in appendix B.

108 (2) Declaration. Unless the court otherwise orders, evidence either in
109 support of or in opposition to the interim order must be presented by
110 declaration. Evidence presented by declaration may not be considered
111 unless the party offering the declaration makes the declarant available for
112 cross-examination. A party wishing to exercise his or her right to cross-
113 examine any non-party declarant must notify the party proffering the
114 declaration testimony at least 24 hours before the start of the hearing or
115 may be considered to have waived the right to cross examination.

116 (3) Time for Service and Filing.

117 (A) Moving Party. The declarations and itemized financial statement
118 of the moving party must be served and filed no later than 21 days
119 prior to the hearing.

120 (B) Responding to Initial Motion. If the respondent does not raise
121 any new issues, the respondent's declarations and itemized financial
122 statement must be served and filed no later than seven days prior to
123 the hearing.

124 (C) Respondent Raising New Issues. If the respondent raises new
125 issues other than those raised in the initial motion, the respondent's
126 declarations and itemized financial statement must be served and
127 filed no later than 14 days prior to the hearing. If the moving party
128 responds to new issues raised by the respondent, any declarations
129 must be served and filed no later than seven days prior to the

130 hearing. A new issue means any issue listed in subdivision (b) not
131 raised by the moving party.

132 (4) Order of Proceeding. The party initially seeking interim relief must
133 proceed first at the hearing.

134 EXPLANATORY NOTE

135 Rule 8.2 was amended, effective September 1, 1983; January 1, 1995; March 1,
136 1996; March 1, 1999; March 1, 2001; October 9, 2002; August 1, 2009; March 1, 2010;
137 March 1, 2011; March 1, 2014; March 1, 2021; March 1, 2025.

138 A motion for a change of venue must be promptly ruled on to accomplish the
139 Committee's intent for interim orders to be expeditiously heard.

140 Subdivision (a)(5) was amended, effective March 1, 2010, to provide, unless
141 waived, a mandatory hearing upon the necessity for the issuance of the order or the
142 amounts to be paid be held within 30 days of the issuance of an ex parte interim order.

143 Subdivision (a) was amended, effective March 1, 2011, to add new paragraphs (8)
144 and (9), clarifying types of ex parte interim orders that may be requested post judgment.
145 Under N.D.C.C. § 14-09-06.6, notice is required prior to postjudgment modification of
146 primary residential responsibility. If exceptional circumstances exist, a postjudgment
147 modification of parenting time may be made ex parte.

148 Paragraph (b)(5) was added, effective March 1, 2001.

149 Paragraph (b)(6) was amended, effective March 1, 2001; October 9, 2002. When
150 an order for child support or spousal support is entered, the order must provide for
151 payment to and through the State Disbursement Unit.

152 A new subdivision (c) was inserted, effective March 1, 2021, to provide a
153 procedure for motions for temporary modification of residential responsibility.

154 Paragraph (d)(2) was amended, effective March 1, 2011, to require a party wishing
155 to cross-examine a declarant to provide pre-hearing notice to the party offering the
156 declaration.

157 Paragraph (d)(2) was amended, effective March 1, 2014, to clarify that a party
158 wishing to cross-examine an opposing party does not need to provide pre-hearing notice.

159 Paragraph (d)(3) was amended, effective March 1, 2011, to change the time for
160 service and filing of declarations.

161 This rule was amended, effective March 1, 2021, to delete the term “affidavit” and
162 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
163 15, which allows anyone to make an unsworn declaration that has the same effect as a
164 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
165 for an unsworn declaration.

166 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
167 April 24, 2020, page 4; April 26, 2019, pages 28-30; January 31-February 1, 2013, pages
168 10-11; September 23-24, 2010, pages 3-7; April 29-30, 2010, pages 7-9, 27; January 28-
169 29, 2010, pages 7-8; September 24-25, 2009, pages 10-11; May 21-22, 2009, pages 44-
170 45; September 26-27, 2002; September 28-29, 2000, pages 9-10; January 27-28, 2000,
171 pages 19-21; April 30-May 1, 1998, pages 8-9; April 27-28, 1995, pages 9-15; September
172 23-24, 1993, pages 16-17; April 20, 1989, page 17; April 26, 1984, page 17; September
173 30-October 1, 1982, pages 18-21; December 11-12, 1980, pages 3-4 and 7.

174 ~~Statutes Affected~~ STATUTES AFFECTED:

175 ~~Considered~~ CONSIDERED: N.D.C.C. ch. 31-15, § 14-09-06.6.

RULE 8.4. SUMMONS IN ACTION FOR DIVORCE, SEPARATION OR TO
DETERMINE PARENTAL RIGHTS AND RESPONSIBILITIES

(a) Restraining Provisions - Divorce or Separation. A summons in a divorce or separation action must be issued by the clerk, or by an attorney for a party to the action, and include the following restraining provisions:

(1) Neither spouse may dispose of, sell, encumber, or otherwise dissipate any of the parties' assets, except:

(A) For necessities of life or for the necessary generation of income or preservation of assets; or

(B) For retaining counsel to carry on or to contest the proceeding;

If a spouse disposes of, sells, encumbers, or otherwise dissipates assets during the interim period, that spouse ~~shall~~ must provide to the other spouse an accounting within 30 days.

(2) Neither spouse may harass the other spouse.

(3) All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.

(4) Except for temporary periods, neither spouse may remove any of their minor children from North Dakota without the written consent of the other spouse or order of the court.

(5) Each summons must include the following statement in bold print:

22 If either spouse violates any of these provisions, that spouse may be in
23 contempt of court.

24 (b) Restraining Provisions - Action to Determine Parental Rights and
25 Responsibilities. A summons in an action to determine parental rights and responsibilities
26 must be issued by the clerk, or by an attorney for a party to the action, and include the
27 following restraining provisions:

28 (1) Except for temporary periods, neither party may remove any of their
29 minor children from North Dakota without the written consent of the other
30 party or order of the court.

31 (2) Each summons must include the following statement in bold print:

32 If a party violates any of these provisions, that party may be in contempt of
33 court.

34 (c) Applicability of Restraining Provisions. The restraining provisions contained in
35 the summons apply to both parties upon service of the summons. The provisions are
36 effective until otherwise provided by court order or by written stipulation of the parties
37 filed with the court.

38 (d) Service by Publication. If a summons is served by publication under
39 N.D.R.Civ.P. 4(e), the Rule 8.4 restraining provisions may be omitted from the published
40 summons. A complete summons, including the Rule 8.4 restraining provisions, must be
41 filed with the complaint and declaration for service by publication in the manner set out
42 in N.D.R.Civ.P. 4(e)(2) and mailed under N.D.R.Civ.P. 4(e)(4).

43 EXPLANATORY NOTE

44 Rule 8.4 was amended, effective March 1, 2007; August 1, 2009; March 1, 2014;
45 March 1, 2017, March 1, 2021; March 1, 2025.

46 Rule 8.4 was adopted, effective March 1, 1996.

47 Subdivisions (a) and (b) were amended, effective March 1, 2017, to eliminate the
48 requirement that the clerk issue a summons “under the seal of the court.”

49 Subdivision (c) was added, effective March 1, 2007, to require restraining
50 provisions to be included in a summons in an action to determine parental rights and
51 responsibilities.

52 Subdivision (d) was added, effective March 1, 2014, to allow omission of this
53 rule’s restraining provisions from the published version of a summons served under
54 N.D.R.Civ.P. 4(e).

55 Rule 8.4 was amended, effective March 1, 2021, to delete the term “affidavit” and
56 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
57 15, which allows anyone to make an unsworn declaration that has the same effect as a
58 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
59 for an unsworn declaration.

60 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
61 April 24, 2020, pages 4-5; September 24-25, 2015, pages 27-28; September 26, 2013,
62 page 30; May 21-22, 2009, pages 44-45; April 27-28, 2006, pages 9-10; January 26,
63 2006, page 13; April 27-28, 1995, pages 17-21.

64 STATUTES AFFECTED:

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

66 CROSS REFERENCE: N.D.R.Ct. Appendix A (Summons in Action for Divorce
67 or Separation); N.D.R.Civ.P. 4 (Commencement of Action - Service of Process,
68 Pleadings, Motions and Orders).

RULE 8.5. DOMESTIC RELATIONS SUMMARY PROCEEDING

(a) Definition and Application.

(1) A summary proceeding may be used by parties to settle a controversy, dispose of a case, or conduct a trial when a party seeks an order, judgment, or amended judgment, under N.D.C.C. chs. 14-04, 14-05, and 14-09.

(2) A summary proceeding may be used when the combined net assets of the parties do not exceed a fair market value of \$50,000, exclusive of the homestead, as defined under N.D.C.C. § 47-18-01.

(b) Beginning of Action - Petition - Summons – Plaintiff’s Financial Declaration.

An action filed under this rule begins when any person signs and files with the court a petition and financial declaration, and serves the petition and financial declaration on the defendant along with a summons and order for appearance setting a hearing. The initial hearing must be held not less than 14 days, nor more than 40 days after service of the order by the plaintiff on the defendant.

(c) Answer – Defendant’s Financial Declaration - Further Relief. The defendant must serve and file an answer and financial declaration at least 2 days before the initial hearing, but no later than 21 days after service of the order for appearance, or the defendant must be considered in default. The defendant may set forth any new matter in the answer and request further relief.

(d) Case Not Suitable for Disposition by Summary Proceeding. Either party may elect to use a non-summary proceeding, without a showing of cause, by filing a notice of

23 election no later than 21 days before the final hearing. If the court decides, based upon
24 the complexity of factual or legal issues, at any stage of the proceeding that the case may
25 not be fairly disposed of under this rule, it may order that the action be decided by the use
26 of a non-summary proceeding.

27 (e) Hearing Procedures.

28 (1) Any hearing of the action must be informal. The court must conduct the
29 hearings and may make its own inquiry during the hearings. The hearings
30 must be of record and all testimony must be under oath or affirmation. A
31 trial by jury is not permitted and attorneys may participate. Attorney's fees
32 and costs may be assessed as provided by law. The rules of evidence do not
33 apply to a summary proceeding.

34 (2) The court must hold the initial hearing with both parties present. No
35 interim order may be issued except on notice and hearing unless the court
36 specifically finds exceptional circumstances as set forth in Rule 8.2. No ex
37 parte interim order may be issued unless the moving party executes a
38 declaration setting forth specific facts justifying the issuance of the order. A
39 restraining and eviction order may not be issued ex parte unless the movant
40 also appears personally and good cause is shown for issuance of the order.

41 (A) The provisions which may be included in an ex parte interim
42 order are temporary parental rights and responsibilities, parenting
43 time, support and other appropriate expenses, use of real or personal
44 property, restraining and eviction.

45 (B) A hearing must be scheduled within 14 days of the issuance of
46 the interim order. The party obtaining the ex parte interim order
47 must secure a hearing date and serve the interim order and the order
48 for appearance on the opposing party.

49 (C) The initial hearing, whether in response to an ex parte interim
50 order or otherwise, must be conducted by the court to afford such
51 temporary relief to the parties and the minor children as provided in
52 Rule 8.2(b).

53 (3) The court must schedule a final hearing within 60 days after the initial
54 hearing to decide the issues of law and fact. The hearing may be continued
55 as necessary. The court may utilize any services for the protection of
56 persons and property that are available in a non-summary proceeding,
57 including appointment of a guardian ad litem, mediator, or referee. The
58 costs of services may be assessed as provided by law against the parties in
59 the proportion as the court determines just and equitable.

60 (4) There will be no formal discovery. At the initial hearing, or at any
61 subsequent time, the court must specify information to be furnished in
62 addition to the financial declaration.

63 (5) Mediation, or other nonadversarial methods, should be used when
64 appropriate as a means of resolving disputes.

65 (f) Judgment or Order. Based upon the evidence presented, the court must issue a
66 written judgment or order indicating its decision in all cases begun under this rule. A

67 judgment or order may be entered without the appearance of either party at the final
68 hearing. The court may utilize all powers available to a district court which are not in
69 conflict with this rule. The court must make findings of fact and conclusions of law in
70 writing or orally and recorded in open court.

71 (g) Appeal. An appeal to the ~~Supreme Court~~ supreme court may be taken by a
72 party as in any civil action.

73 (h) Option. The presiding judge of each judicial district may designate one or more
74 judges or referees who will use the proceeding.

75 EXPLANATORY NOTE

76 Rule 8.5 was amended, effective August 1, 2009; March 1, 2011; March 1, 2021;
77 March 1, 2025.

78 Rule 8.5 was made permanent, effective February 12, 2003.

79 Rule 8.5 was initially adopted, effective October 1, 1996, as a pilot project in two
80 judicial districts. Subdivision (h) was amended, effective August 1, 2001, to permit the
81 presiding judge of each judicial district to designate one or more judges or referees to use
82 the proceeding.

83 Paragraph (a)(2) was amended, effective March 1, 2011, to increase the limit on
84 combined net assets from \$20,000 to \$50,000.

85 Subdivision (b) was amended, effective March 1, 2011, to increase the time to
86 hold the initial hearing from 10 to 14 days after service of the order of appearance.

87 Subdivision (c) was amended, effective March 1, 2011, to increase the time for the
88 defendant to serve and file an answer and financial declaration from 20 to 21 days after
89 service of the order for appearance.

90 Subdivision (d) was amended, effective March 1, 2011, to change the time for a
91 party to elect to use a non-summary proceeding from 15 to 21 days before the final
92 hearing.

93 Rule 8.5 was amended, effective March 1, 2021, to delete the term “affidavit” and
94 replace it with “declaration.” This amendment was made in response to N.D.C.C. ch. 31-
95 15, which allows anyone to make an unsworn declaration that has the same effect as a
96 sworn declaration, such as an affidavit. N.D.C.C. § 31-15-05 provides the required form
97 for an unsworn declaration.

98 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
99 April 24, 2020, pages 4-5; September 23-24, 2010, page 25; April 29-30, 2010, page 26;
100 May 21-22, 2009, pages 44-45; January 30-31, 2003; April 26-27, 2001, pages 6-8;
101 September 28-29, 1995, pages 11-12.

102 STATUTES AFFECTED:

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

RULE 8.6. PARENTING INVESTIGATORS

(a) Roster of Parenting Investigators. The ~~State Court Administrator shall state~~ court administrator will maintain and monitor a roster of persons satisfying the qualifications under ~~paragraph~~ subdivision (b) to serve as parenting investigators. The roster must include the parenting investigator's name and address. The roster must be updated and published on an annual basis and be available for inspection in the clerk of district court's office. The ~~State Court Administrator~~ state court administrator may establish a reasonable fee for placement on the roster and a reasonable yearly renewal fee. Parenting investigators appointed to provide services under this rule must be selected from the roster.

(b) Qualifications. To be listed on the roster and qualify as a parenting investigator under N.D.C.C. §§14-09-06.3 and 14-09.06.4, a person ~~shall~~ must provide the ~~State Court Administrator~~ state court administrator with written credentials indicating the person satisfies the following requirements:

- (1) a minimum of an ~~Associate Degree~~ associate degree in an academic field related to child care, child development, or children's services; at least five years of experience in the delivery or supervision of child care or children's services, child development services, or in the education of children; or a 40 hour program of specialized parenting investigation training;

22 (2) completion of at least 18 hours of specialized parenting investigation
23 training, unless the person has obtained 40 hours of specialized training in
24 accordance with ~~sub~~paragraph (b)(1);

25 (3) completion of 18 hours of parenting investigation-related training every
26 three years after receiving the initial hours of specialized training;

27 (4) communication skills necessary to successfully conduct an interview,
28 prepare a written report, and make an oral presentation; and

29 (5) no criminal conviction or substantiated instance of child abuse or
30 neglect.

31 (c) Investigatory Responsibilities. A parenting investigator ~~shall~~ must:

32 (1) become knowledgeable about the child's and family's history and
33 present situation by reviewing the court file; reviewing records and reports,
34 including medical, law enforcement, psychological, psychiatric, and
35 educational records and reports; and researching information about any
36 related criminal or child protection proceeding, investigation, or allegation;

37 (2) obtain necessary authorizations for release of information;

38 (3) interview, as appropriate, social workers and probation officers to
39 obtain background and current information regarding the child and family;

40 (4) interview, as appropriate, service providers (i.e. teachers, psychologists,
41 psychiatrists, doctors, nurses, neighbors, and others) who are
42 knowledgeable about the child's and family's past and present situation;

- 43 (5) interview, as appropriate, the child's parents and siblings, and the
44 people with whom the child resides or may reside, and other people who
45 are significant in the child's daily life;
- 46 (6) meet and observe the child in a manner consistent with the child's
47 developmental capabilities;
- 48 (7) observe, as appropriate, parent and child interaction;
- 49 (8) prepare a written report regarding the child's best interests, including
50 conclusions and recommendations and the facts upon which they are based;
- 51 (9) file the written report with the court and serve it on the parties at least
52 30 days prior to the hearing; and
- 53 (10) recommend, as appropriate, psychological evaluations, psychiatric
54 evaluations, physical evaluations, parenting evaluations, chemical
55 dependency evaluations, or other evaluations.

56 (d) Court Proceedings. A parenting investigator ~~shall~~ must attend all court
57 proceedings unless excused by the court and ~~shall~~ must testify when requested. A
58 parenting investigator may not call a witness, question a witness, file a motion, or act as a
59 legal advocate.

60 (e) Post Investigation Duties. The parenting investigator, by order of the court,
61 may assist in parenting rights and responsibilities issues after submission of the report.

62 (f) Parenting Investigator Review Board. The Parenting Investigator Review
63 Board consists of nine members: three judges and one lawyer appointed by the ~~Chief~~
64 ~~Justice~~ chief justice, two lawyers appointed by the Board of Governors of the State Bar

65 Association, and three lay parenting investigators who are or have been listed in good
66 standing on the parenting investigator roster and who are appointed by the ~~Chief Justice~~
67 chief justice after consultation with the ~~President~~ president of the State Bar Association.
68 Board members are appointed for three-year terms and may serve no more than three
69 consecutive three-year terms. Of the members initially appointed and as determined by
70 lot at the first meeting, one-third of the members will serve for one year, one-third will
71 serve for two years, and one-third will serve for three years. Subject to the three term
72 limit, each member is eligible for reappointment and serves until the member's successor
73 is appointed. The ~~Chief Justice~~ chief justice appoints the board chair. Expenses incurred
74 by members in the performance of duties are reimbursed by the appointing authority.

75 (1) Board Responsibilities. The board, through panels established under this
76 rule, ~~shall~~ will receive and review complaints concerning the performance
77 and conduct of parenting investigators providing services under this rule.

78 (2) Complaints - Procedures for Review.

79 (A) All complaints must be submitted in writing to the chair of the
80 board. The complaint must include facts underlying the complaint,
81 must specify the misconduct that is the subject of the complaint, and
82 must be signed by the complainant.

83 (B) Upon receipt of a written complaint, the chair of the board ~~shall~~
84 must determine if the complaint is with regard to a pending case in
85 which parenting investigator services are being provided. If the
86 complaint involves parenting investigator conduct in a pending case,

87 the chair ~~shall~~ must inform the complainant that the complaint may
88 only be addressed before the court that is hearing the pending case,
89 either by seeking removal of the parenting investigator or by
90 contesting the information or recommendation contained in the
91 parenting investigator's report or testimony. In pending cases,
92 review of the complaint and communications with the complainant
93 must be handled by the chair of the board in a manner that assures
94 the judge presiding in the case remains uninformed about the
95 complaint. If the complaint concerns conduct unrelated to a pending
96 case, the following procedures apply:

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

102 (ii) If the chair of the board determines the allegations in the
103 complaint, if true, have merit, the complaint must be referred
104 to a panel of the board appointed by the chair for further
105 consideration. The panel must consist of three members of the
106 board, of which at least one panel member must be a lay
107 parenting investigator. The panel ~~shall~~ must provide a copy of
108 the complaint to the parenting investigator and request a

109 written response from the parenting investigator within 30
110 days of receipt of the request. The request must identify
111 specific issues in the complaint to which the panel desires a
112 response. The parenting investigator must provide a copy of
113 the response to the complainant. The panel may, as
114 circumstances warrant, request that the complainant and the
115 parenting investigator meet with the panel to review the
116 allegations in the complaint.

117 (3) In reviewing a complaint, the panel ~~shall~~ must consider whether the
118 allegations in the complaint indicate any of the following forms of
119 misconduct:

- 120 (A) failure to fulfill responsibilities required under ~~paragraph~~
121 subdivisions (c), (d), or (e);
- 122 (B) violation of the code of conduct for parenting investigators,
123 which is included and incorporated in this rule as an ~~Appendix~~
124 appendix;
- 125 (C) misrepresentation of qualifications to serve as a parenting
126 investigator;
- 127 (D) violation of state or local laws or court rules; or
- 128 (E) taking or failing to take any other action that would reasonably
129 place the suitability of the person to serve as a parenting investigator
130 in question.

131 (4) Findings and Dispositions. In considering the complaint and the
132 parenting investigator's written response, the panel ~~shall~~ must make
133 findings regarding each of the specific issues in the complaint to which the
134 panel requested a response. The findings must indicate that either there is
135 no merit to the issue based on the parenting investigator's response or that
136 there is merit to the issue. The panel ~~shall~~ must determine whether the
137 issues found to have merit indicate any form of misconduct identified under
138 ~~sub~~paragraph (f)(3). The panel may take any of the following actions: issue
139 a written reprimand, refer the parenting investigator to additional training,
140 require that the parenting investigator be assigned a mentor for a specified
141 period of time, or direct that the parenting investigator be removed from the
142 roster. The panel ~~shall~~ must take into consideration any prior complaints
143 that resulted in the imposition of any of the identified actions. The
144 complainant and the parenting investigator must be notified in writing of
145 the panel's disposition of the complaint. If the panel directs removal from
146 the roster, the panel may specify the manner and time frame within which
147 the person may apply for placement at a later time on the roster.

148 (5) Confidentiality. A complaint and any associated records are confidential
149 unless the panel has determined under ~~sub~~paragraph (f)(4) that the
150 complaint has merit. Confidential records may be disclosed only in
151 response to a court order.

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

157 (g) Parenting Investigator Training. The ~~State Court Administrator shall~~ state court
158 administrator will provide for regular training programs to satisfy the qualification
159 requirements under ~~paragraph~~ paragraphs (b)(2) and (3). The ~~State Court Administrator~~
160 ~~shall~~ state court administrator will provide for the development and maintenance of a
161 parenting investigator manual to serve as a resource for those providing services under
162 this rule and as a basis for parenting investigator training programs.

163 EXPLANATORY NOTE

164 Rule 8.6 was adopted, effective March 1, 2000; amended effective March 1,
165 2007; August 1, 2009; March 1, 2025.

166 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
167 May 21-22, 2009, pages 44-45; September 24-25, 1998, pages 8-15; Court Services
168 Administration Committee Minutes of April 7, 2006 and July 14, 2006.

RULE 8.8. ALTERNATIVE DISPUTE RESOLUTION

(a) Scope. Parties to civil suits are encouraged to participate in alternative dispute resolution (“ADR”) before commencing a case or at an early stage of the case; and all parties in civil cases must discuss early ADR participation and the appropriate timing of such effort.

(1) For the purposes of this rule, the following processes are included as forms of ADR:

(A) mediation is a process in which a nonjudicial neutral mediator facilitates communication between parties to assist the parties in reaching voluntary decisions related to their dispute;

(B) nonbinding arbitration is a process of private adjudication in which parties present their cases to the arbitrator who issues an advisory decision. The parties agree in advance that the decision of the arbitrator is only advisory and will be used by the parties as a tool in attempting to resolve the dispute;

(C) early neutral evaluation is a process during which a content or process expert or attorney provides a neutral and unbiased evaluation of issues related to a dispute between parties. The evaluation might be about a specific question or issue or about how the case may fare at trial;

22 (D) mini-trial is an advisory process involving the trying of a dispute
23 before a neutral adjudicator in a summary abbreviated fashion; and
24 (E) summary jury trial is an advisory process involving the trying of
25 a dispute before a jury in a summary abbreviated fashion. The jury is
26 often small in number and sometimes uses expert-jurors.

27 (2) For purposes of this rule, the following processes are not included as
28 forms of ADR:

29 (A) Judicial settlement conference is a N.D.R.Civ.P. 16 process
30 involving an informal discussion with a judge who is or is not
31 assigned to the dispute. It can involve a wide array of negotiation
32 and mediation techniques depending on the style of the judge. The
33 purpose is to promote early settlement of cases.

34 (B) Binding arbitration is a process of adjudication in which the
35 parties are required by law, contract or other agreement to submit
36 their dispute to an arbitrator who decides the result of a dispute. The
37 resulting decision by the arbitrator is binding upon the parties except
38 under limited circumstances.

39 (b) Procedure. Within 14 days or such other time the court may direct prior to the
40 initial pretrial conference held under N.D.R.Civ.P. 16, a Rule 8.8 statement to the court
41 must be filed with the district court (in the form shown in appendix F) detailing the ADR
42 participation that has occurred or will occur or if it will not occur. In a divorce, the
43 statement may be incorporated into the joint informational statement under N.D.R.Ct.

44 8.3(a). The statement must certify that the parties have discussed ADR participation with
45 each other and that the parties' lawyers have discussed ADR with their clients, and, if an
46 ADR process will occur, the time by which it will be completed. The party or parties who
47 do not agree to participate must certify in the statement that they have discussed ADR
48 with counsel or, if not represented, that the party is aware of ADR. If a party or parties
49 choose not to participate in ADR, the statement must contain the reason for not
50 participating. If the parties agree to an ADR process but cannot agree on a neutral, the
51 court may designate a person from the ADR neutral roster maintained by the ~~State Court~~
52 ~~Administrator's~~ state court administrator's office.

53 (c) Education. The Joint ADR Committee must make available to parties written
54 and video materials which may be used by the attorneys and parties to fulfill any
55 requirements under this rule for ADR discussion or information.

56 (d) Confidentiality. The ADR processes are confidential and not open to the
57 public. When persons agree to conduct and participate in ADR processes for the purpose
58 of compromising, settling, or resolving a dispute, evidence of anything said or of any
59 admission made in the course of the ADR processes is inadmissible as evidence and
60 disclosure of confidential ADR communications is prohibited, except as authorized by
61 the court and agreed to by the parties or as permitted under N.D.C.C. §§ 31-04-11 and
62 14-09.1-06.

63 (1) Statements made and documents produced in nonbinding ADR
64 processes which are not otherwise discoverable are not subject to discovery

65 or other disclosure and are not admissible into evidence for any purpose at
66 trial.

67 (2) The neutral conducting an ADR proceeding may not be called to testify
68 in connection with any dispute relating to the ADR proceeding or its result
69 except upon written agreement of the parties and the concurrence of the
70 district court, or when otherwise required by law.

71 (3) Notes, records, work product, and recollections of the neutral are
72 confidential, which means that they will not be disclosed to the parties, the
73 public, or anyone other than the neutral unless all parties and the neutral
74 agree to such disclosure or such disclosure is required by law or other
75 applicable professional codes. No record will be made without the
76 agreement of both parties, except for a memorandum of issues that are
77 resolved.

78 (e) Administration. Each district court will appoint a judicial officer or employee
79 for its district to serve as program administrator to implement, oversee, and evaluate the
80 district's ADR program.

81 EXPLANATORY NOTE

82 Rule 8.8 was adopted, effective March 1, 2001; and amended effective October 1,
83 2006; March 1, 2011; March 1, 2025.

84 Rule 8.8 is an adaptation of United States District Court, District of North Dakota,
85 Local Rule 16.2.

86 Subdivision (b) was amended, effective March 1, 2011, to change the time to file a
87 Rule 8.8 statement from 15 to 14 days before the initial pretrial conference.

88 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
89 April 29-30, 2010, pages 26-27; January 28-29, 1999, pages 7-12; May 6-7, 1999, pages
90 7-11.

91 STATUTES AFFECTED:

92 REPEALED: N.D. Sup. Ct. Admin. R. 28, effective March 1, 2001.

93 CROSS REFERENCE: N.D.R.Ct. 8.9 (Roster of Alternative Dispute Resolution
94 Neutrals).

RULE 8.9. ROSTER OF ALTERNATIVE DISPUTE RESOLUTION NEUTRALS

(a) Rosters of Neutrals. The ~~State Court Administrator shall~~ state court administrator will maintain and monitor a roster of neutrals for civil arbitration, civil mediation, and domestic relations/contested child proceedings mediation. Each roster must include the neutral's name, address, and credentials. Each roster must be updated and published on an annual basis and be available for inspection in the clerk of the district court's office. The ~~State Court Administrator~~ state court administrator may establish a reasonable fee for placement on the roster and a reasonable yearly renewal fee.

(b) Qualifications. To be listed on a roster, a neutral ~~shall~~ must provide the ~~State Court Administrator~~ state court administrator with written credentials indicating the neutral meets the following requirements:

(1) Civil Arbitrator Roster. An arbitrator ~~shall~~ must complete 30 hours minimum of arbitration training. The training must include the following topics:

(A) Pre-hearing communications between parties and between parties and the neutral;

(B) Components of the hearing process including evidence, presentation of the case, witnesses, exhibits, objectives, awards, and dismissals;

(C) Settlement techniques;

23 (D) Rules, statutes, and practices covering arbitration, including
24 these rules.

25 (E) An arbitrator must also complete nine hours of continued
26 arbitration training during each three-year period.

27 (2) Civil Mediator Roster. A mediator ~~shall~~ must complete 30 hours
28 minimum of mediation training, including a minimum of 15 hours of role-
29 playing. The training must include the following topics:

30 (A) Conflict resolution and mediation theory, including causes of
31 conflict and interest-based versus positional bargaining and models
32 of conflict resolution;

33 (B) Mediation skills and techniques, including information gathering
34 skills, communication skills, problem solving skills, interaction
35 skills, conflict management skills, negotiation techniques, caucusing,
36 cultural and gender issues, and power balancing;

37 (C) Components in the mediation process, including an introduction
38 to the mediation process, fact gathering, interest identification,
39 option building, problem solving, agreement building, decision
40 making, closure, drafting agreements, and evaluation of the
41 mediation process;

42 (D) Mediator conduct, including conflicts of interest, confidentiality,
43 neutrality, ethics, standards of practice, and mediator introduction;

44 (E) Rules, statutes, and practices governing mediation in the trial
45 court system, including these rules.

46 (F) A mediator must also complete nine hours of continued
47 mediation training during each three-year period.

48 (3) Domestic Relations Mediator/Contested Child Proceedings Mediator
49 Roster. A domestic relations mediator or a contested child proceedings
50 mediator under N.D.C.C. ch. 14-09.1 ~~shall~~ must complete 40 hours
51 minimum of domestic relations mediation training, including two hours
52 minimum of domestic abuse training, and nine hours of continued domestic
53 relations mediation training during each three-year period; and

54 (A) have a ~~Bachelor's Degree in Behavioral Science~~ bachelor's
55 degree in behavioral science with two years of experience in
56 family/child intervention service; or

57 (B) have a ~~Master's Degree in Behavioral Science~~ master's degree in
58 behavioral science with one year of experience in family/child
59 intervention service; or

60 (C) have a license to practice law supplemented with two years of
61 experience in domestic relations cases.

62 (4) Post-Judgment Domestic Relations Mediator Roster. A domestic
63 relations proceedings mediator ~~shall~~ must complete 40 hours minimum of
64 domestic relations mediation training, including two hours minimum of
65 domestic abuse training, and nine hours of continued domestic relations

66 mediation training during each three-year period, and have a license to
67 practice law supplemented with two years of experience in domestic
68 relations.

69 (5) Post-Judgment Estate Mediator Roster. An estate proceedings mediator
70 ~~shall~~ must complete 40 hours minimum of domestic relations or civil
71 mediation training, and nine hours of continued trust and estate law training
72 during each three-year period, and have a license to practice law.

73 (6) A qualified neutral may not provide services during a period of
74 suspension of a professional license.

75 (7) If a neutral is rostered in Minnesota within 60 days of the effective date
76 of this rule, the neutral may be placed on the appropriate North Dakota
77 roster within one year of the effective date of this rule as long as the neutral
78 is still in good standing with the Minnesota rostering system.

79 (c) Selection of Neutral. The parties may select a neutral who is not listed on the
80 ~~State Court Administrator's~~ state court administrator's roster. A court-appointed
81 contested child proceedings mediator under N.D.C.C. § 14-09.1-03 must have the
82 qualifications specified in subdivision (b)(3) of this rule.

83 (d) Continuing Training. Training requirements may be attained through course
84 work and attendance at state and national ADR conferences. The neutral is responsible
85 for maintaining attendance records and ~~shall~~ must disclose the information to program
86 administrators and the parties to any dispute. The neutral ~~shall~~ must submit continuing

87 education credit information to the ~~State Court Administrator's~~ state court administrator's
88 office every three years.

89 (e) Certification of Training Programs. Neutrals ~~shall~~ must attend initial and
90 continuing training programs that are approved by the Joint Committee on Alternative
91 Dispute Resolution.

92 (f) Disclaimer. Each roster must include the following disclaimer:

93 The qualifications for listing a neutral on a roster are minimum standards, and the
94 ~~State Court Administrator's~~ state court administrator's listing of a neutral does not imply
95 the neutral has the requisite degree of skill or competency for a particular case. When
96 choosing a neutral, the parties must make further inquiry about the qualifications and
97 experience of the neutral. The rosters are intended to assist people in locating an
98 appropriate neutral by serving as a starting point.

99 (g) Ethics Enforcement Procedure

100 (1) Introduction

101 The purpose of the Code of Mediation Ethics, Appendix A, is to provide
102 standards of ethical conduct to guide mediators who provide mediation
103 services, to inform and protect consumers of mediation services, and to
104 ensure the integrity of the mediation process. In order for mediation to be
105 effective, there must be broad public confidence in the integrity of the
106 process. Mediators have a responsibility not only to the parties and the legal
107 system, but also to the continuing improvement of the process. They must

108 observe high standards of ethical conduct. These provisions should be
109 construed to advance these objectives.

110 Failure to comply with any provision in the Code of Ethics may be the basis for
111 removal from the roster of mediators maintained by the ~~State Court Administrator~~ state
112 court administrator and for such other action as may be taken by the North Dakota
113 ~~Supreme Court~~ supreme court or the State Bar Association of North Dakota, or other
114 professional organizations. Violation of a provision of the ~~Code~~ code should not itself
115 give rise to a cause of action nor should it create any presumption that a legal duty has
116 been breached. Nevertheless, since the rules do establish standards of conduct for
117 mediators, a mediator's violation of a rule may be evidence of breach of the applicable
118 standard of conduct.

119 (2) Scope

120 This procedure applies to complaints against any individual mediator or
121 mediation organization listed on the statewide mediation roster ~~pursuant to~~
122 under this rule.

123 Advisory Comment

124 A mediator is subject to this complaint procedure when providing any
125 mediation services. The complaint procedure applies whether the services
126 are court ordered or not, and whether the services are or are not ~~pursuant to~~
127 under North Dakota Rules of Court. The Alternative Dispute Resolution
128 Review Board will consider the full context of the alleged misconduct,
129 including whether the mediator was subject to other applicable codes of

130 ethics, or was representing a mediation organization at the time of the
131 alleged misconduct.

132 (3) Board

133 The Alternative Dispute Resolution Review Board will consist of three ~~(3)~~
134 experienced mediators appointed by the ~~Chief Justice~~ chief justice of the
135 North Dakota ~~Supreme Court~~ supreme court after consultation with the
136 ~~President~~ president of the State Bar Association of North Dakota. At least
137 one member appointed must be a non-lawyer mediator. Each member will
138 serve for a term not to exceed three years; however, at the time of the
139 creation of the ~~Board~~ board one member will serve one year before being
140 eligible for reappointment, one member will serve two years before being
141 eligible for reappointment and one member will serve three years before
142 being eligible for reappointment. No member may serve more than two
143 consecutive three year terms. The ~~Chief Justice shall~~ chief justice will
144 designate a ~~Chair of the Board~~ chair of the board.

145 (4) Procedure

146 (A) A complaint must be in writing, signed by the complainant, and
147 mailed or delivered to the Alternative Dispute Resolution Review
148 Board. The complaint must identify the mediator and make a short
149 and plain statement of the conduct forming the basis of the
150 complaint.

151 (B) The ~~Board shall~~ board will review the complaint to determine
152 whether the allegations(s), if true, constitute a violation of the Code
153 of Ethics.

154 (C) If the allegations(s) of the complaint do not constitute a violation
155 of the Code of Ethics, the complaint must be dismissed and the
156 complainant and the mediator must be notified in writing.

157 (D) If the ~~Board~~ board concludes that the allegations of the
158 complaint, if true, constitute a violation of the Code of Ethics, the
159 ~~Board~~ board will undertake such review, investigation, and action it
160 ~~deems~~ considers appropriate. In all such cases, the ~~Board shall~~ board
161 must send to the mediator, by certified mail, a copy of the complaint,
162 a list identifying the ethical rules that may have been violated, and a
163 request for a written response to the allegations and to any specific
164 questions posed by the ~~Board~~ board. It may not be considered a
165 violation of the Code of Ethics for the mediator to disclose notes,
166 records, or recollections of the mediation process complained of as
167 part of the complaint procedure. Confidentiality will be upheld by
168 the ~~Board~~ board and only the records and notes relevant to the
169 complaint will be considered in order to protect the parties and the
170 integrity of the mediation process. Except for good cause shown, if
171 the mediator fails to respond to the complaint in writing within ~~thirty~~
172 ~~(30)~~ days, the allegations(s) ~~shall~~ will be considered admitted.

173 (E) The ~~Board~~ board, at its discretion, may refer the complainant and
174 mediator to mediation conducted by a neutral and qualified mediator
175 to resolve the issues raised by the complainant. Mediation may
176 proceed only if both the complainant and mediator consent. If the
177 complaint is resolved through mediation, the ~~Board shall~~ board must
178 dismiss the complaint, unless the resolution includes sanctions to be
179 imposed by the ~~Board~~ board. If no agreement is reached in
180 mediation, the ~~Board shall~~ board will determine whether to proceed
181 further.

182 (F) After review and investigation, the ~~Board shall~~ board must
183 advise the complainant and mediator of the ~~Board's~~ board's action in
184 writing by certified mail sent to their respective last known
185 addresses. Upon request within 14 days from receipt of the ~~Board's~~
186 board's action on the complaint, the mediator and the complainant
187 are entitled to a hearing before the ~~Board~~ board to contest proposed
188 sanctions or findings, and have the right to bring or defend against
189 all charges, to be represented by an attorney, and to examine and
190 cross-examine witnesses. The ~~Board shall~~ board will receive
191 evidence that the ~~Board~~ board considers necessary to understand and
192 determine the dispute. Relevancy must be liberally construed in
193 favor of admission. The ~~Board shall~~ board must make an electronic
194 recording of the proceedings. The ~~Board~~ board at its own initiative,

195 or by request of the complainant or mediator, may issue subpoenas
196 for the attendance of witnesses and the production of documents and
197 other evidentiary matter. The ~~Board's~~ board's decision is final.

198 (5) Sanctions

199 (A) The ~~Board~~ board may impose sanctions, including but not
200 limited to:

- 201 (i) issuing a private reprimand;
- 202 (ii) designating the corrective action necessary for the
203 mediator to remain on the statewide roster;
- 204 (iii) notifying the appointing court and any professional
205 licensing authority with which the mediator is affiliated of the
206 complaint and its disposition;
- 207 (iv) publishing the mediator's name, a summary of the
208 violation, and any sanctions imposed;
- 209 (v) removing the mediator from the roster of qualified
210 mediators and setting conditions for reinstatement; and
- 211 (vi) assessing costs and expenses of proceedings against the
212 mediator, including without limitation, the costs of
213 investigations, service of process, witness fees, and a court
214 reporter's services.

215 (B) Sanctions may only be imposed if supported by clear and
216 convincing evidence. Conduct considered in previous or concurrent

217 ethical complaints against the mediator is admissible to show a
218 pattern of related conduct, the cumulative effect of which constitutes
219 an ethical violation, and in consideration of appropriate sanctions.

220 (6) Confidentiality

221 (A) Unless and until sanctions are imposed, all files, records, and
222 proceedings of the ~~Board~~ board that relate to or arise out of any
223 complaint shall must be confidential, except:

- 224 (i) as between ~~Board~~ board members and staff;
- 225 (ii) on request of the mediator, the file maintained by the
226 ~~Board~~ board, excluding its work product, must be provided to
227 the mediator;
- 228 (iii) as otherwise required or permitted by rule or statute; and
- 229 (iv) to the extent that the mediator and complainant both
230 waive confidentiality.

231 (B) If sanctions are imposed against any mediator under Section III
232 A (2)-(5), the sanction must be of public record, and the ~~Board~~ board
233 file must remain confidential.

234 (C) Nothing in this rule may be construed to require the disclosure of
235 the mental processes or communications of the ~~Board~~ board or staff.

236 (7) Privilege; Immunity

237 (A) Privilege. A statement made in these proceedings is absolutely
238 privileged and may not serve as a basis for liability in any civil
239 lawsuit brought against the person who made the statement.

240 (B) Immunity. Board members and staff are immune from suit for
241 any conduct in the course of their official duties.

242 EXPLANATORY NOTE

243 Rule 8.9 was adopted, effective March 1, 2001; amended effective August 1,
244 2009; January 1, 2014; March 1, 2025.

245 A neutral is an individual or an organization offering an alternative dispute
246 resolution process.

247 Arbitration is the process through which each party presents its case before a
248 neutral third party who renders a binding or non-binding decision.

249 Mediation is an informal, non-adversarial process through which a neutral third
250 party facilitates communication between the parties to promote settlement. Decision-
251 making authority remains with the parties; the mediator has no authority to render a
252 judgment on any issue of the dispute.

253 Subdivision (b) was amended, effective January 1, 2014, to add new paragraphs 4
254 and 5 on post-judgment mediator qualifications.

255 Subdivision (g) was added, effective August 1, 2009, to provide an enforcement
256 procedure for the Code of Mediation Ethics attached to this rule as Appendix A.

257 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
258 January 28-29, 1999, pages 7-12; May 6-7, 1999, pages 7-11.

259 CROSS-REFERENCE: N.D.R.Ct. 8.1 (Family Mediation Program), N.D.R.Ct. 8.8
260 (Alternative Dispute Resolution); N.D.R.App.P. 5 (Post-Judgment Mediation).

RULE 8.11. PARENTING COORDINATORS

(a) Roster of Parenting Coordinators. The North Dakota ~~Supreme Court~~ supreme court through the ~~State Court Administrator~~ state court administrator ~~shall~~ will maintain a roster of persons satisfying the qualifications under paragraph (b) to serve as parenting coordinators. The roster must include the parenting coordinator's name, business address, email, and telephone number. The roster must be updated and published on the North Dakota ~~Supreme Court~~ supreme court website. The ~~State Court Administrator~~ state court administrator may establish a reasonable fee for placement on the roster and a reasonable yearly renewal fee. Parenting ~~Coordinators~~ coordinators appointed to provide services under this rule must be selected from the roster.

(b) Qualifications. To qualify as a parenting coordinator and be listed on the roster under N.D.C.C. §14-09.2-03, a person ~~shall~~ must provide the ~~State Court Administrator~~ state court administrator with written credentials. A parenting coordinator:

(1) ~~Shall~~ Must have either an ~~Associate Degree~~ associate degree in an academic field related to child care, child development, or children's services with two years of experience in family and children services; or a ~~Bachelor's Degree~~ bachelor's degree;

(2) ~~Shall~~ Must have completed at least 12 hours of specialized parenting coordinator training which includes developmental stages of children, the dynamics of high conflict, the stages and effects of divorce, problem-

22 solving techniques, and the dynamics of domestic violence, its impact on
23 children and lethality assessment;

24 (3) ~~Shall~~ Must have completed a minimum 40 hours of domestic relations
25 mediation training;

26 (4) ~~Shall~~ Must have no criminal conviction for, or substantiated instance of
27 child abuse or neglect, and ~~shall~~ must not be or have been restrained by a
28 domestic violence protection order or disorderly conduct restraining order
29 entered after notice and hearing; and

30 (5) ~~Shall~~ Must complete at least 18 hours of parenting coordinator related
31 training every three years after receiving the initial hours of specialized
32 training. Parenting ~~Investigators~~ investigators otherwise qualified and
33 trained under this rule, may use either parenting investigator continuing
34 education or parenting coordinator continuing education to meet this
35 requirement.

36 (c) Role and Responsibilities. A parenting coordinator ~~shall~~ must:

37 (1) Inform the parties of the role of a parenting coordinator;

38 (2) Monitor implementation of a voluntary or court-ordered parenting plan
39 or parenting schedule as requested by the families or the court;

40 (3) Facilitate the resolution of disputes regarding the implementation of the
41 parenting plan, the schedule, or parenting time issues provided such
42 resolution does not involve a substantive change to the court's order;

43 (4) Recommend strategies for implementing the parenting plan or resolving
44 other parenting issues that may be impacting the parenting plan;

45 (5) Assist the parties in developing communication and cooperation for the
46 purpose of effective co-parenting of the children, including helping the
47 parents find resources to develop effective communication skills; and

48 (6) Document the services provided and record agreements reached.

49 (d) Training. The ~~State Court Administrator~~ state court administrator ~~shall~~ will
50 provide for regular training programs to satisfy the qualification requirements under
51 paragraph (b)(2) and (5). The ~~State Court Administrator~~ state court administrator ~~shall~~
52 will provide for the development and maintenance of a parenting coordinator manual to
53 serve as a resource for those providing services under this rule and as a basis for
54 parenting coordinator training programs.

55 (e) Evaluation. All parenting coordinators ~~shall~~ must cooperate with any research
56 and evaluation process undertaken by the ~~State Court Administrator~~ state court
57 administrator to measure the impact, outcomes, and costs of the program. This may
58 include collecting data, providing written comments, completing surveys, or participating
59 in focus groups.

60 EXPLANATORY NOTE

61 Rule 8.11 was adopted effective August 1, 2009; amended effective March 1,
62 2025.

63 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

RULE 9.1. ADMINISTRATIVE APPEALS

In an appeal in which the decision of the court will be based exclusively on a record made before an administrative agency, board, commission, or officer, after receipt of the record, the court ~~shall~~ must fix a time for filing briefs. The court, in its discretion, may permit or require oral argument. A party desiring oral argument may so indicate on or before the time fixed for filing of that party's brief.

EXPLANATORY NOTE

Rule 9.1 was adopted effective July 1, 1981; amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

RULE 10.2. SMALL CLAIMS COURT

(a) Appearances. The parties to any action in which a hearing has been requested shall must appear in person, unless otherwise authorized by the court, and may be represented by a lawyer admitted to practice law before the courts of this state.

(b) Legal Entities. A legal entity may be represented in a small claims court action by the following persons who have been authorized to act on its behalf:

(1) an officer;

(2) a person holding an ownership interest;

(3) a director or other member of the governing board;

(4) a trustee; or

(5) an employee.

EXPLANATORY NOTE

Rule 10.2 was adopted, effective June 1, 2006; amended effective March 1, 2025.

Subdivision (a) applies to actions in which a hearing has been requested. Under N.D.C.C. § 27-08.1-02, if the court has not received a request for hearing within 20 days of filing of the claim, the matter proceeds by default.

Subdivision (b) allows certain authorized persons to represent a legal entity in small claims court. A legal entity is a body, other than a natural person, that can function legally, sue or be sued, and make decisions through authorized representatives. Examples of legal entities are corporations, partnerships, limited liability companies, and political subdivisions.

23 Under N.D.C.C. § 27-08.1-01 (3), a claim may not be filed in small claims court by
24 an assignee of the claim, including owners or employees of collection agencies.

25 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9;
26 April 27-28, 2006, page 10; January 26, 2006, pages 13-17.

27 STATUTES AFFECTED:

28 CONSIDERED: N.D.C.C. ch. 27-08.1.

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RULE 10.3. ELECTRONIC COURT SEALS

“Electronic seal” means an electronic image of a seal of the court or clerk. Any requirement that a court document be affixed with a seal is satisfied if the document bears an electronic seal of the court and an electronic image of the signature or electronic facsimile signature of the judge, clerk, or other authorized person. The state court administrator may prescribe the format and appearance of an electronic image adopted for use as an official seal.

EXPLANATORY NOTE

Rule 10.3 was adopted effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of April 26, 2024, page 5; January 26, 2024, pages 11-12.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. § 1-01-38 (definition of seal).

CROSS REFERENCE: N.D.R.Ev. 901 (Requirement of Authentication or Identification); N.D.R.Ev. 902 (Self-Authentication); N.D.R.Civ.P. 44 (Proving an Official Record); N.D.R.Crim.P. 27 (Proof of Official Record).

RULE 11.3. STIPULATIONS

No agreement or consent between the parties or their attorneys with respect to proceedings in court is binding, in case of a dispute as to its terms, unless reduced to writing and signed by the parties or their respective attorneys or made in open court and read into the record of the proceedings.

EXPLANATORY NOTE

Rule 11.3 was adopted effective July 1, 1981; explanatory note amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

RULE 11.5.SANCTIONS

The trial court may take any appropriate action against any person failing to perform an act required by the rules or required by court order. Appropriate action includes a sanction provided by ~~Rules~~ N.D.R.Civ.P. 5, 11, 16, 25, 30, 37, 40, 45, or 56, N.D.R.Civ.P.

EXPLANATORY NOTE

Rule 11.5 was adopted effective July 1, 1981; amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers), N.D.R.Civ.P. 11 (Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions), N.D.R.Civ.P. 16 (Pretrial Conferences; Scheduling; Management), N.D.R.Civ.P. 25 (Substitution of Parties), N.D.R.Civ.P. 30 (Deposition by Oral Examination), N.D.R.Civ.P. 37 (Failure to Make or Cooperate in Discovery; Sanctions), N.D.R.Civ.P. 40 (Assignment of Cases for Trial), N.D.R.Civ.P. 45 (Subpoena), N.D.R.Civ.P. 56 (Summary Judgments).

RULE 11.6. MEDIUM-NEUTRAL CASE CITATIONS

(a) Citations Before January 1, 1997. The initial citation of any published opinion of the ~~Supreme Court~~ supreme court released before January 1, 1997, contained in a brief, memorandum, or other document filed with any trial or appellate court and a citation in the table of cases in a brief must include a reference to the volume and page number of the North Western Reporter in which the opinion is published. Subsequent citations within a brief, memorandum, or other document must include the page number and sufficient reference to identify the initial citation.

(b) Citations After January 1, 1997. When available, initial citations must include the volume and initial page number of the North Western Reporter in which the opinion is published. The initial citation of any published opinion of the ~~Supreme Court~~ supreme court or ~~Court of Appeals~~ court of appeals released on or after January 1, 1997, contained in a brief, memorandum, or other document filed with any trial or appellate court and the citation in the table of cases in a brief must also include a reference to the calendar year in which the decision was filed, followed by the court designation of “ND” for the ~~Supreme Court~~ supreme court or “ND App” for the ~~Court of Appeals~~ court of appeals followed by a sequential number assigned by the ~~Clerk~~ clerk of the ~~Supreme Court~~ supreme court. A paragraph citation should be placed immediately following the sequential number assigned to the case. Subsequent citations within the brief, memorandum or other document must include the paragraph number and sufficient references to identify the initial citation.

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EXPLANATORY NOTE

Rule 11.6 was adopted, effective March 5, 1997, subject to comment, to implement the use of medium-neutral case citations in North Dakota. Amended effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of September 28, 2023, page 9.

For Illustrative Purposes.

Cite to a North Dakota ~~Supreme Court Opinion~~ supreme court opinion published prior to January 1, 1997 as follows:

Smith v. Jones, 500 N.W.2d 600, 601 (N.D. 1994).

Smith, 500 N.W.2d at 601.

Id. at 602.

Black v. Black, 79 N.D. 100, 101, 60 N.W.2d 500, 501 (1953).

Black, 79 N.D. at 101, 60 N.W.2d at 501.

Id. at 103, 60 N.W.2d at 502.

Cite to a North Dakota ~~Supreme Court Opinion~~ supreme court opinion published after January 1, 1997, as follows:

Before publication in North Western Reporter:

Smith v. Jones, 1997 ND 15.

After publication in North Western Reporter:

Smith v. Jones, 1997 ND 15, 600 N.W.2d 900.

Spot cite to a North Dakota ~~Supreme Court Opinion~~ supreme court opinion published after January 1, 1997, as follows:

45 Before publication in North Western Reporter:

46 Smith v. Jones, 1997 ND 15, ¶ 21.

47 Smith, 1997 ND 15, ¶¶ 21-25.

48 Id. at ¶ 15.

49 After publication in North Western Reporter:

50 Smith v. Jones, 1997 ND 15, ¶ 21, 600 N.W.2d 900.

51 Smith, 1997 ND 15, ¶¶ 21-25, 600 N.W.2d 900.

52 Id. at ¶ 15.

53 The use of the ¶ symbol in spot citations is necessary to distinguish paragraph
54 numbers from page numbers. “N.D.” (with periods) refers to the “North Dakota Reports,”
55 which were published between 1890 and 1953. “ND” (without periods) refers to the
56 database containing the electronic version of opinions filed after January 1, 1997. North
57 Dakota Court of Appeals court of appeals cases filed after January 1, 1997 are to be cited
58 in the same manner as North Dakota Court Supreme Court supreme court cases using the
59 database identifier "ND App" (without periods).

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RULE ~~11.7~~ 11.10. TITLE AND CITATION

These rules are titled, “North Dakota Rules of Court,” and may be cited as “N.D.R.Ct.”

EXPLANATORY NOTE

Former Rule 11.7 renumbered effective March 1, 2025.

SOURCES: Joint Procedure Committee Minutes of January 26, 2024, page 11; September 28, 2023, page 9.

RULE 20. MAGISTRATES- QUALIFICATIONS, AUTHORITY, EDUCATION AND
PROCEDURES

Section 1. Authority.

In accordance with N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-31, the
supreme court adopts the following rule relating to magistrates appointed by a presiding
judge.

Section 2. Statement of Policy.

The North Dakota judicial system's policy is to provide for the qualifications, the
extent and assignment of authority, and the conduct of the office of magistrate within the
North Dakota judicial system in each judicial district.

Section 3. Qualifications of Magistrates.

Minimum qualifications for magistrates includes:

- (a) United States' citizenship;
- (b) except for duties delegated under subsections 5(a)(3), (4), ~~and~~ (6), and (7),
admission to practice as an attorney in the state of North Dakota;
- (c) physical residence in the county of appointment after appointment unless
physical residence is waived by the appointing and confirming authorities.

Section 4. Appointment.

The presiding judge of the judicial district may appoint a magistrate to serve at the
pleasure of the presiding judge. A copy of an order appointing a magistrate and
designating delegated duties or an order modifying delegated duties must be filed with

23 the state court administrator within three business days of the date of the order.

24 Magistrates may be paid a salary as determined by the supreme court.

25 Section 5. Scope of Delegable Duties.

26 (a) The presiding judge of the judicial district may delegate the following duties
27 and authority to a magistrate who has met the qualifications in Section 3:

28 (1) to issue search warrants under N.D.C.C. § 29-29-01 and N.D.R.Crim.P.
29 41;

30 (2) to issue administrative search warrants under N.D.C.C. § 29-29.1-01;

31 (3) to approve complaints and to issue summonses or warrants under
32 N.D.C.C. ch. 29-05 and N.D.R.Crim.P. 3 and 4;

33 (4) to hold initial appearance under N.D.R.Crim.P. 5, and to set bail under
34 N.D.C.C. ch. 29-08 and N.D.R.Crim.P. 46;

35 (5) to conduct preliminary examinations under N.D.R.Crim.P. 5.1;

36 (6) to make individual determinations of eligibility for appointment of
37 indigent defense counsel under N.D.C.C. § 54-61-01;

38 ~~(6)~~(7) to perform registrar and clerk duties under the Uniform Probate
39 Code, N.D.C.C. tit. 30.1, particularly N.D.C.C. §§ 30.1-14-02 and 30.1-14-
40 07 in informal probate proceedings and N.D.C.C. § 30.1-15-05 in
41 uncontested formal probate proceedings;

42 ~~(7)~~(8) to conduct preliminary mental health commitment proceedings under
43 N.D.C.C. § 25-03.1-09, notwithstanding and consistent with § 25-03.1-
44 02~~(3)~~(4) and ~~(8)~~(10);

45 ~~(8)~~(9) to issue temporary domestic violence protection orders under
46 N.D.C.C. ch. 14-07.1;
47 ~~(9)~~(10) to issue temporary disorderly conduct restraining orders under
48 N.D.C.C. ch. 12.1-31.2; and
49 ~~(10)~~(11) to issue temporary sexual assault restraining orders under
50 N.D.C.C. § 12.1-31-01.2.

51 (b) The duties delegated to each magistrate under this section must be reduced to
52 writing and signed by the presiding judge of the judicial district.

53 (c) The duties of a magistrate may be diminished by the presiding judge of the
54 judicial district upon notice in writing to the magistrate.

55 Section 6. Geographical Jurisdiction.

56 Each magistrate has the geographical jurisdiction within the judicial district as
57 assigned by the presiding judge of the judicial district, and is expected to maintain an
58 office in conjunction with a district judge.

59 Section 7. Alternate Magistrate.

60 The presiding judge of the judicial district may appoint an alternate magistrate in a
61 county in which the presiding judge or another district judge does not reside. The
62 alternate magistrate must meet the qualifications of section 3 and may be delegated duties
63 under section 5. The alternate magistrate will serve as magistrate whenever the magistrate
64 for the county is unavailable to fulfill the duties of magistrate.

65 Section 8. Vacancy.

66 The presiding judge of the judicial district may fill any vacancy in the office of
67 magistrate or alternate magistrate under section 4 and section 7.

68 Section 9. Proceedings on the Record.

69 Proceedings must be heard on the record as in district court.

70 Section 10. Removal From Office.

71 A magistrate may be removed from the office of magistrate by the presiding judge
72 of the judicial district upon notice in writing to the magistrate. The presiding judge must
73 notify the state court administrator of the removal.

74 Section 11. Standard of Conduct.

75 The Code of Judicial Conduct is the standard of conduct which must be observed
76 by each magistrate. The judicial conduct commission has jurisdiction over the conduct of
77 magistrates to the same extent as it has over other judges.

78 Section 12. Continuing Education.

79 (a) Each magistrate appointed under N.D.C.C. § 27-05-31 must attend a
80 continuing education program every odd calendar year as provided by the judicial branch
81 education commission. The magistrate must be reimbursed for necessary expenses,
82 travel, and subsistence by the judicial system.

83 (b) If any magistrate fails to attend an educational session without being excused
84 by the state court administrator, the state court administrator will report such fact to the
85 presiding judge of the judicial district and to the judicial conduct commission, for such
86 action as it considers appropriate.

87 Section 13. Effective Date.

88 This rule, as amended, is effective ~~August 11, 2021~~March 1, 2025.

89 EXPLANATORY NOTE

90 Rule 20 adopted effective January 1, 1983; amended effective June 24, 1985;
91 emergency amendments adopted effective December 20, 1989, readopted February 22,
92 1990; amended effective August 1, 1993; January 1, 1995; April 1, 1998; March 1, 2005;
93 July 1, 2007; January 1, 2009; July 1, 2009; March 1, 2012; August 1, 2017; August 11,
94 2021; March 1, 2025.

95 SOURCES: Joint Procedure Committee Minutes of September 28, 2023, pages 3-
96 4; September 23-24, 2010, pages 14-15, 21. N.D. Const., Art. VI, § 3; N.D.C.C. §§ 27-
97 05-31, 27-07.1-07.

RULE 21. ELECTRONIC AND PHOTOGRAPHIC MEDIA COVERAGE OF COURT
PROCEEDINGS

Section 1. Authority. This rule is adopted under the authority of N.D. Const. art. VI, § 3.

Section 2. Definitions. As used in this rule:

(a) “Good cause,” for exclusion under subsection 21(4)(b)(2), means expanded media coverage having a substantial effect on the objector which would be qualitatively different from the effect on members of the general public and from coverage by other types of media.

(b) “Judge” means the presiding officer in a judicial proceeding.

(c) “Judicial proceeding” or “proceeding” includes any civil or criminal trial, hearing, or other matter conducted before a court established under North Dakota’s unified judicial system as well as any court established by a North Dakota municipality.

(d) “Expanded media coverage” includes broadcasting, televising, electronic recording, or photographing of a judicial proceeding for the purpose of gathering and disseminating information to the public by media personnel.

(e) “Media personnel” includes any person or entity regularly working in the gathering and dissemination of news, information, photos, or videos.

Section 3. Media representative. Media personnel must designate a person for each administrative unit and for the supreme court with whom the court may consult as their representative.

23 Section 4. General. The court may permit expanded media coverage of a judicial
24 proceeding in the courtroom while the judge is present, and in adjacent areas as the court
25 may direct. Expanded media coverage provided for in this rule may be exercised only by
26 media personnel.

27 (a) Coverage allowed. Media personnel may request the court before which a
28 judicial proceeding is pending to authorize coverage of the proceeding or of all
29 proceedings relating to a case. Expanded media coverage may be permitted of all judicial
30 proceedings, except proceedings specifically excluded by statute, this rule, or in the
31 exercise of the judge's discretion.

32 (b) Judge's authority to deny expanded media coverage. The judge may deny
33 expanded media coverage of any proceeding or portion of a proceeding in which the
34 judge determines on the record, or by written findings:

35 (1) Expanded media coverage would materially interfere with a party's
36 right to a fair trial;

37 (2) A witness or party has objected and shown good cause why expanded
38 media coverage should not be permitted;

39 (3) Expanded media coverage would include testimony of an adult victim
40 or witness in a prosecution under N.D.C.C. chapter 12.1-20 or for charges
41 in which an offense under that chapter is an included offense or an essential
42 element of the charge, unless the victim or witness consents;

43 (4) Expanded media coverage would include testimony of a juvenile victim
44 or witness in a proceeding in which illegal sexual activity is an element of
45 the evidence; or

46 (5) Expanded media coverage would include undercover agents or relocated
47 witnesses.

48 (c) Judge's authority to limit or end media coverage. The judge may limit or end
49 expanded media coverage at any time during a proceeding, if the judge determines on the
50 record, or by written findings:

51 (1) The requirements of this rule or additional guidelines imposed by the
52 judge have been violated; or

53 (2) The substantial rights of an individual participant, or rights to a fair trial
54 will be prejudiced by the expanded media coverage if it is allowed to
55 continue.

56 (d) Coverage prohibited. Proceedings ~~held in chambers, proceedings~~ closed to the
57 public, and jury selection may not be photographed, recorded, or broadcast. Conferences
58 between an attorney and client, witness or aide, between attorneys, or between counsel
59 and the court at the bench may not be recorded or received by sound equipment. Close-up
60 photography of jurors is prohibited.

61 (e) No appeal of expanded media coverage decision. A judge's ruling on expanded
62 media coverage is not appealable.

63 Section 5. Requests. Expanded media coverage must be requested as provided in
64 this section:

65 (a) Appellate court proceeding. A media representative must request expanded
66 media coverage from the supreme court at least two business days before the scheduled
67 proceeding and must set forth which type of coverage is sought, including whether live
68 coverage is sought. The request must be made by electronic means, with copies to
69 counsel of record. The court may determine the coverage of any proceeding.

70 (b) Trial court proceeding. A media representative must request media coverage
71 through the Odyssey case management system from the judge of the trial court before
72 which the proceeding is scheduled at least seven days before the proceeding and must set
73 forth which type of coverage is sought, including whether live coverage is sought. Notice
74 of the request for coverage must be given to all counsel of record and any self-
75 represented litigants. The notice must be in writing and filed with proof of service with
76 the clerk of the appropriate court. If the proceeding is scheduled less than seven days in
77 advance, a request for coverage and notice of request must be given as soon as
78 practicable.

79 (c) Single request for all proceedings. Following the procedures in subsection 5(b),
80 a media representative may make a single request to cover all proceedings in a case. The
81 judge may not grant the request for all proceedings if a criminal defendant is not
82 represented by counsel.

83 (d) Equipment and technical variance. Upon application of media personnel, the
84 judge may permit the use of equipment or technology not provided for in this rule. An
85 objection to any variance in equipment or technology must be made as provided in

86 section 6. The judge may rule on a variance without advance application or notice, if all
87 parties and counsel consent.

88 (e) Deadlines may be extended or reduced by court order.

89 Section 6. Objections to coverage in trial court proceeding. A party to a
90 proceeding objecting to expanded media coverage in a trial court must file a written
91 objection with the court, stating the grounds for the objection at least three days before
92 the scheduled proceeding. Notice of the objection must be sent to the media
93 representative who requested the coverage.

94 The judge must rule on an objection before the scheduled proceeding or at the time
95 the objection is raised. The judge may rule on the written objection and timely filed
96 responses or the judge May give counsel, parties, witnesses, and requesting media
97 personnel an opportunity to present additional evidence by affidavit or by other means as
98 the judge may direct. The judge may extend or reduce the time for filing an objection.
99 The judge may extend the right of objection to a person not specifically provided for in
100 this rule.

101 Section 7. Equipment and media personnel. Unless the court directs otherwise,
102 equipment used in a judicial proceeding is limited to two professional-quality video
103 cameras operated by one person each and two audio systems for radio broadcasts. Two
104 still photographers are allowed in a judicial proceeding. If media pooling is necessary
105 because of these limitations on equipment and personnel, it is the sole mandatory
106 responsibility of the media and must be arranged before coverage without calling on the
107 court to mediate. Every effort must be made for the joint use of broadcasting equipment

108 within the courtroom. Wires, microphones, and similar equipment must be placed as
109 unobtrusively as possible within the courtroom at least fifteen minutes before the
110 proceeding and must be secured or taped down when appropriate. Artificial lighting and
111 flashbulbs are not permitted. Only equipment that does not produce distracting noises is
112 allowed in the courtroom. Media coverage outside the courtroom must be handled with
113 care and discretion, but need not be pooled or held to the restrictions of this rule, except
114 as provided in Section 8.

115 The quantity and types of equipment permitted in the courtroom is in the
116 discretion of the judge. All forms of media that have requested and been granted
117 permission must be given equal access to proceedings.

118 Section 8. Technical.

119 (a) All equipment, including video cameras, is to be designed or modified so
120 participants in the judicial proceeding being covered are unable to determine when
121 recording is occurring. Still cameras must be selected for quietness, and be operated
122 unobtrusively and as quietly as possible.

123 (b) Microphones for counsel and judges must be equipped with off and on
124 switches to facilitate compliance with subsection 4(d).

125 (c) With the judge's approval, existing courtroom light sources may be modified
126 (e.g., higher wattage light bulbs), if the modifications are made and maintained without
127 public expense.

128 (d) Audio pickup for expanded media coverage must use any existing audio
129 system in the courtroom, if the pickup would be technically suitable for broadcast. If

130 possible, electronic audio recording equipment and any media personnel must be located
131 outside of the courtroom.

132 (e) Media personnel must be located in, and coverage of the proceedings must take
133 place from, an area or areas designated by the judge. The area or areas designated must
134 provide reasonable access to the proceeding to be covered. Even if expanded media
135 coverage of a proceeding is granted, media personnel may not record interviews for
136 broadcast in the hallways immediately adjacent to the entrances to the courtroom.
137 Photographing through the windows or open doors of the courtroom is prohibited.

138 (f) Video cameras and audio equipment may be installed or removed from the
139 courtroom only when the court is not in session.

140 Section 9. Decorum. The decorum and dignity of the court, the courtroom, and the
141 proceedings must be maintained at all times. Court customs must be followed. Media
142 personnel must dress appropriately for the proceedings. Movement about the courtroom
143 is limited, and efforts must be made not to leave the courtroom while proceedings are in
144 progress. Loud talking is not permitted while proceedings are in progress.

145 In addition to specific responsibilities provided in this rule, judges must take
146 whatever steps are necessary to ensure that expanded media coverage is conducted
147 without compromising the safety of persons having business before the court.

148 Section 10. North Dakota Advisory Commission on Electronic Media in the
149 Courtroom. The North Dakota advisory commission on electronic media in the courtroom
150 is appointed by the chief justice, and consists of two members of the North Dakota bar
151 association, three members of the North Dakota judicial conference, one member

RULE 39. RECORDING DISTRICT COURT TRIALS AND PROCEEDINGS, AND
PREPARING TRANSCRIPTS

Section 1. Authority

Under N.D. Const. art. VI, § 3, the supreme court has the authority to establish policies and procedures to be followed by all courts of the state. The court also has specific authority to establish policies relating to personnel and court records under N.D.C.C. § 27-02-05.1 ~~and relating to court records under N.D.C.C. § 27-02-05.2.~~

Section 2. Preserving the Record

Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases under N.D.C.C. § 39-06.1-03, the record of testimony and proceedings of the district court must be preserved using audio-recording software, video-recording software, or stenographic shorthand notes. All electronic recording software must meet the minimum specifications established in administrative policies.

Section 3. Filing

The court reporter must file all shorthand notes of the proceeding with the clerk of district court at the conclusion of the trial or proceeding or as soon after as is practical. All audio recordings and annotations or tags must be maintained in the electronic recording software.

Section 4. Access to Originals

(a) Employees

22 An employee of the district court, or other individual under contract with the
23 court, who is charged with preparing the transcript may access audio recordings or
24 shorthand notes for the purpose of preparing the transcript. All audio recordings
25 maintained in the electronic recording software may be accessed through the electronic
26 recording software or a recording may be replicated.

27 (b) Non-Employees

28 If the court staff who attended the proceeding is not able to prepare the transcript,
29 the court may order that another person be allowed to access the shorthand notes or audio
30 recording.

31 Section 5. Transcript – Duty to Prepare

32 Court staff must prepare a transcript of the proceeding upon receiving an order
33 from the court or an order for transcript from the clerk of district court and upon payment
34 of fees. Each district must establish procedures to ensure that transcripts are prepared in
35 accordance with time lines established in the North Dakota Rules of Appellate Procedure.

36 Section 6. Criminal Action Prepared at State Expense

37 A judge of a district court in which a criminal action or proceeding has been tried,
38 on the judge's own motion or on application of the defendant or the state's attorney of the
39 county, may order a transcript of the action or proceeding, or of any part, to be made at
40 state expense whenever there is reasonable cause.

41 Section 7. Form of Transcript

42 The transcript must be prepared in the form prescribed by N.D.R.App.P. 10.

43 Section 8. Certification

44 The transcript must be certified by the person preparing the transcript in
45 accordance with N.D.R.App.P. 10.

46 Section 9. Fees

47 (a) Individuals Employed by the Judiciary

48 Court staff must receive a transcript preparation fee as established by
49 administrative policy.

50 (b) Non-Judicial Employees

51 If the transcript is prepared by an individual who is not a judicial employee,
52 payment will be made directly to the preparer, at a rate not to exceed administrative
53 policy, and in accordance with N.D.R.App.P. 10.

54 (c) Originals and Copies

55 The original shorthand notes or audio recording of the proceeding are the property
56 of the state of North Dakota. The transcript is the property of the state of North Dakota
57 after it has been filed with the clerk of district court.

58 EXPLANATORY NOTE

59 Administrative Rule 39 was adopted, effective March 1, 1995; amended effective
60 July 1, 1997; March 1, 1998; December 1, 2019; August 11, 2021; March 1, 2023; March
61 1, 2025.

62 SOURCES: Joint Procedure Committee Minutes of April 26, 2024, page 9;
63 January 27, 2022, pages 2-4; September 30, 2021, pages 14-15; January 30, 1997, pages
64 9-10.

65 CROSS REFERENCE: N.D.R.App.P. 10 (The Record on Appeal).

RULE 40. ACCESS TO RECORDINGS OF PROCEEDINGS IN DISTRICT COURT

Section 1. Authority

Under N.D. Const. Art. VI, § 3, the supreme court has the authority to establish policies and procedures to be followed by all courts of the state. The court also has specific authority to establish policies relating to court records under N.D.C.C. § 27-02-05.21.

Section 2. Access to Recordings – Copies – On-site Access

(a) Parties and their attorneys may access or obtain copies of an audio recording of a trial court proceeding without charge, unless access is restricted by order of the court.

(b) A non-party may request a copy of an audio recording of a court proceeding by submitting a request in writing to the judge who presided over the proceeding or the judge's designee. If the proceeding was closed or confidential, no recording will be provided. The judge may restrict access to all or part of a recording of a public proceeding if:

(1) it would materially interfere with a party's right to fair trial;

(2) a witness or party has objected and shown good cause why it should not be available;

(3) it includes testimony of an adult victim or witness in a prosecution under N.D.C.C. ch. 12.1-20, or for charges in which an offense under that chapter is an included offense or an essential element of the charge, unless the victim or witness consents;

23 (4) it includes testimony of a juvenile victim or witness in a proceeding in
24 which illegal sexual activity is an element of the evidence;
25 (5) it includes testimony of undercover agents or relocated witnesses; or
26 (6) it includes by testimony or other comment information protected under
27 N.D.R.Ct. 3.4(a).

28 (c) A person seeking to limit access to or availability of an audio recording under
29 subsection 2(b)(1) or (2) must submit a written motion to the court. The person must give
30 notice of the motion to all parties to the proceedings. The court may require the person to
31 give notice of the motion to any other persons or entities identified in the recording.

32 (d) If suitable, supervised accommodations are available, a non-party requesting
33 access to an audio recording of a trial court proceeding may listen to the recording in a
34 dedicated area, unless access is restricted by order of the court. The listener may not
35 record or copy the recording by any electronic or other means.

36 (e) Each district will establish procedures to ensure timely production of audio
37 recordings upon request of parties or non-parties.

38 (f) The state court administrator will establish reasonable fees and payment
39 methods for producing an audio recording of a court proceeding for a non-party. The fee
40 must be paid in advance.

41 (g) Video or electronic media coverage, if granted, is governed by N.D. Sup. Ct.
42 Admin. R. 21.

43 Section 3. Status of Recording

44 Unless otherwise provided by court rule, the transcript of the proceeding, and not
45 an audio recording provided under this rule, is the official record of the proceeding.

46 EXPLANATORY NOTE

47 Adopted effective January 17, 1996, subject to comment; final adoption effective
48 March 6, 1996; amended effective January 1, 1997; October 1, 2016; August 11, 2021;
49 March 1, 2023; March 1, 2024; March 1, 2025.

50 SOURCES: Joint Procedure Committee Minutes of April 26, 2023, page 9; April
51 28, 2023, page 13; January 27, 2022, pages 17-19.

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RULE 41. ACCESS TO COURT RECORDS

Section 1. Introduction.

The longstanding public policy of the State of North Dakota is that records of public or governmental entities are public, open and accessible for inspection. This rule implements the constitutional open records provision for the judicial branch. To do so, the supreme court through this rule exercises its constitutional authority to provide for management of judicial branch records by adopting the structure and many of the procedures applicable to the rest of state government.

By this rule, the court exercises its authority under N.D.Const. art. XI, § 6 and art. VI, § 3. Unless another procedure is specifically provided in this rule, the procedures set out in N.D.C.C. § 44-04-18 (2021) for access to records of other public entities are expressly adopted as the procedures for accessing court records. Statutory amendments after the effective date of this rule are not applicable to the judicial branch unless expressly adopted by an amendment to this rule.

The procedures adopted by reference to N.D.C.C. § 44-04-18 are to be read applying the definitions provided in this rule. These procedures include the reasonable fees that may be charged, the permitted form of request, the reasonable time for response, the number of copies that will be provided, and other requirements. Under N.D.C.C. § 44-04-18(6), any request for records must comply with any applicable court orders or rules relating to discovery or privilege.

Explanatory Notes to Section 1.

23 By adopting the procedures in N.D.C.C. § 44-04-18, the court does not adopt the
24 remedies set forth in that section for delay or denial of access.

25 Attorney General opinions are instructive, but not binding on the judicial system.

26 [Cross ref: N.D. Const. Art. I, sec. 9; N.D. Const. Art. I, sec. 12; N.D. Const. Art.
27 XI, sec. 6; 22 N.D.C.C. Ch. 44-04; N.D.C.C. §§ 27-02-08 -10.]

28 Section 2. Definitions.

29 (a) “Record” means recorded information of any kind, regardless of the physical
30 form or characteristic by which the information is stored, recorded, or reproduced, which
31 is in the possession or custody of a court of this state and which has been received or
32 prepared for use in connection with public business or contains information relating to
33 public business. “Record” does not include unrecorded thought processes or mental
34 impressions, but does include preliminary drafts and working papers. “Record” does not
35 include records that have been disposed of under court records management rules, or
36 records to which a court has access but which are not a part of the court records as
37 defined in this rule.

38 (b) “Confidential record” means all or part of a record that is either expressly
39 declared confidential or is prohibited from being open to the public.

40 (c) “Exempt record” means all or part of a record that is neither required by law to
41 be open to the public, nor is confidential, but may be open in the discretion of the court.

42 (d) “Court record” means a record that is an administrative record or a case record.

43 (e) “Case record” means a record relating to a particular judicial proceeding,
44 including an index, calendar, docket, register of actions, official record of the proceeding,
45 order, decree, judgment or minute order.

46 (f) “Administrative record” means a record that relates to the management,
47 supervision or administration of a court.

48 (g) “Remote access” means remote internet access to a court record, including
49 electronic search, inspection, or copying information, without a physical visit to a court
50 facility.

51 (h) “Bulk distribution” means the distribution of all, or a significant subset, of the
52 information in court records without modification or compilation.

53 (i) “Compiled information” means information that is derived from the selection,
54 aggregation or reformulation of some specified subset of data from more than one case
55 record.

56 Explanatory Notes to Section 2.

57 Prior versions of this rule referred to documents, actions, and information and
58 were not consistent with how the Century Code defines records. This definition of
59 “record” is copied from N.D.C.C. § 44-04-17.1(16) (2021) but modified to include only
60 records in the possession of a court of this state. “Confidential record” and “exempt
61 record” are also adopted from the Century Code definitions to facilitate classifying court
62 records into the same structure of prohibited disclosure (confidential records),
63 discretionary disclosure (exempt records), and presumptively required disclosure (all
64 other records).

65 The definitions of “court record,” “case record,” and “administrative record” are
66 substantially revised to derive from the definition of “record” and refer to a class of
67 “record” by content.

68 “Remote access” is defined in this rule so that the court may provide convenient,
69 self-service access to certain court records. This definition is intended to apply to
70 anonymous or unauthenticated internet users but not to a user of an internet terminal
71 provided in a court facility. This definition is not intended to apply to a telephone, letter
72 or email request requesting records. The scope of records available by remote access may
73 be narrower than the scope of records available through a courthouse terminal or
74 individual request.

75 Section 3. Access to Court Records.

76 (a) Court Records.

77 Unless otherwise provided by this rule, court records are open and accessible upon
78 request consistent with N.D.C.C. § 44-04-18 (2021).

79 (b) Case Records.

80 (1) A court’s register of actions, docket or index must disclose the existence
81 of any case record that is a confidential record or exempt record. Upon a
82 finding that such disclosure would endanger an individual, a court may
83 delay disclosure for a period of time corresponding to the duration of the
84 likely danger.

85 (2) Case records filed before the March 1, 2009, effective date of N.D.R.Ct.
86 3.4 may contain information that must be redacted under N.D.R.Ct.

87 3.4(~~a~~b)(1). Such case records are confidential records and may be disclosed
88 consistent with N.D.C.C. § 44-04-18.10 (2021).

89 (3) Bulk distribution of case records may be permitted if the records are not
90 confidential records.

91 (4) Upon request and payment of the reasonable cost of compiling and
92 providing the information, a person may request compiled information from
93 case records in a format other than the format in which they are maintained.

94 (5) Any request for compiled information or bulk distribution of case
95 records must be made to the state court administrator. The request must
96 identify the information requested, describe the requestor's purpose for
97 requesting the information, explain how the purpose will serve public
98 education or another public purpose, and describe how the requestor will
99 provide for appropriate access limitations and security of any records that
100 may be provided in response.

101 (6) The following case records are confidential records:

102 (A) A record the disclosure of which is prohibited by federal law,
103 state law, court rule, applicable case law, or a court order
104 specifically identifying the record.

105 (B) A declaration, affidavit, sworn testimony or record of
106 proceedings in support of the issuance of a search or arrest warrant
107 pending the return of the warrant.

108 (C) A complaint or associated arrest or search warrant to the extent
109 confidentiality is ordered by the court under N.D.C.C. § 29-05-32 or
110 N.D.C.C. § 29-29-22.

111 (D) A record filed with the court for in-camera examination pending
112 disclosure.

113 (E) A record maintained in relation to a Child Relinquishment to
114 Identified Adoptive Parent matter brought under N.D.C.C. Ch. 14-
115 15.1.

116 (F) A record maintained in relation to a matter involving:

117 (i) an application for a domestic violence protection order
118 under N.D.C.C. § 14-07.1-02;

119 (ii) a petition for a disorderly conduct restraining order under
120 N.D.C.C. Ch. 12.1-31.2 sought on the basis of alleged
121 domestic violence; or

122 (iii) a petition for a sexual assault restraining order under
123 N.D.C.C. § 12.1-31-01.2. Orders of the court in these
124 proceedings are confidential only in matters in which the
125 initial petition was dismissed summarily by the court without
126 a contested hearing.

127 (G) A record of a deferred imposition of sentence under
128 N.D.R.Crim.P. 32.1 or pretrial diversion under N.D.R.Crim.P. 32.2
129 after the matter has been dismissed.

130 (H) A record of a case in which the court found no probable cause
131 for the issuance of a criminal complaint.

132 (I) Records containing the following protected information, unless
133 exempted from redaction by N.D.R.Ct. 3.4(eb)(3):

134 (i) except for the last four digits, social security numbers,
135 taxpayer identification numbers, and financial account
136 numbers,

137 (ii) except for the year, birth dates, and

138 (iii) except for the initials, the name of an individual known
139 to be a minor, unless the minor is a party, including: and there
140 is no statute, regulation, or rule mandating nondisclosure

141 – in a non-criminal traffic case;

142 – in a change of name case;

143 – in a minor conservatorship case;

144 – named in a final domestic violence protection order,

145 disorderly conduct restraining order or sexual assault

146 restraining order;

147 – when the law requires the public disclosure of the

148 minor’s full name; or

149 – as otherwise ordered by the court.

150 (J) The property and debt listing of the parties to a divorce as
151 provided by N.D.C.C. § 14-05-24.3.

152 (K) Any criminal record ordered sealed under N.D.C.C. Ch. 12-60.1;

153 (L) Any employment, household or financial information provided
154 in an application for indigent defense services.

155 (7) The following case records are exempt records:

156 (A) A record of the names of qualified or summoned jurors and
157 contents of jury qualification forms;

158 (B) Addresses, phone numbers, email addresses of jurors;

159 (C) A record of voir dire of jurors;

160 (D) A judge or court employee's work material, including personal
161 calendars, recorded communications, bench memoranda, notes, work
162 in progress, draft documents and non-finalized documents; and

163 (E) Any record submitted for filing is exempt until it is filed and
164 remains exempt if its filing has been rejected.

165 (8) If the court receives a request under this rule from a federal, state, or
166 local official acting in the exercise of their official duties and powers, to

167 examine a confidential or exempt court record, and such access is

168 specifically authorized by law, the court may disclose the requested record

169 if the request is in writing and contains sufficient assurances that the

170 request is within the scope of the legal authorization.

171 (9) Unless restricted by order of the court, parties to an action may examine
172 records filed in the action.

173 (c) Administrative Records.

174 (1) Records maintained concerning individuals who are court employees, or
175 who perform volunteer services for the court, are open ~~in~~ consistent with
176 N.D.C.C. § 44-04-18.1 and N.D. Supreme Court Policy 120.

177 (2) Job applicant records are open to the extent consistent with N.D.C.C. §§
178 44-04-18.1, 44-04-18.4, and 44-04-18.27 (2021)

179 (3) The following administrative records are confidential records:

180 (A) The name of a patron of the North Dakota Supreme Court Law
181 Library or the North Dakota Legal Self Help Center or information
182 sufficient to identify a patron or the subject about which a patron
183 requested information;

184 (B) A record relating to a request for an opinion from the Judicial
185 Ethics Advisory Committee, other than a formal opinion;

186 (C) Information concerning an employee grievance appeal to the
187 personnel policy board.

188 (4) The following administrative records are exempt records.

189 (A) All security plans, codes and other records that provide for the
190 security of information, individuals, or property in the possession or
191 custody of the courts against theft, tampering, improper use, illegal
192 releases, trespass, or physical abuse or violence are exempt records
193 consistent with N.D.C.C. §§ 44-04-24, 25 & 27.

194 (B) Preliminary and draft reports concerning court operations and
195 other pre-decisional documents are exempt records. Final

196 administrative documents and reports concerning the operation of
197 the court system are open for public inspection and copying by the
198 custodian on court premises. Consistent with N.D.C.C. § 44-04-
199 18(9) and (10), preliminary draft reports, and pre-decisional
200 documents relating to court operations, are no longer exempt records
201 once the draft reports and pre-decisional documents are circulated to
202 any court policy advisory committee or to the public for comment.

203 (C) Remote access user records. Any record that would disclose that
204 a user of a remote or electronic access system has access to a
205 particular court record is an exempt record. Record access
206 information is accessible by the public only on a showing of good
207 cause under subsection 4(b)

208 (D) Proprietary and licensed material. Consistent with N.D.C.C. §§
209 44-04-18.4 and -18.5, computer programs or other records that are
210 subject to proprietary rights or license agreements are exempt
211 records and may be disclosed only in accordance with the terms and
212 conditions of any applicable agreements, licenses, or court order.
213 Consistent with N.D.C.C. § 44-04-18(3), no record may be excluded
214 from public access solely because access is provided by programs or
215 applications subject to licensing agreements, or because the
216 recordkeeping system is subject to proprietary rights.

217 (E) Judicial branch training records and reports. Evaluation materials
218 and records generated by participants in judicial education programs
219 such as test scores, educational assessments, practical exercise
220 worksheets, and similar materials are exempt records.

221 (F) Party, witness and crime victim contact information gathered and
222 recorded by the court for administrative purposes, including
223 telephone numbers and e-mail, street and postal addresses are
224 exempt records.

225 (G) Consistent with N.D.C.C. § 44-04-18.24, any record maintained
226 within a legislative bill tracking system is exempt.

227 Explanatory Notes to Section 3.

228 For certain case types, including juvenile court and mental health cases, all records
229 in a case file are restricted by statute.

230 Parties who enter into bulk distribution agreements with the court may have access
231 to birthdate, street address and social security number information upon certifying
232 compliance with laws governing the security of protected information. Such laws include
233 the federal Fair Credit Reporting Act, the Gramm Leach Bliley Act, the USA Patriot Act
234 and the Driver's Privacy Protection Act.

235 Warrants. Under N.D.R.Crim.P. 41(c)(1)(D), a search warrant must be executed
236 within ten days. In contrast, an arrest warrant may be outstanding for months or years. All
237 records supporting issuance of a search warrant are confidential pending return of the
238 search warrant. Under N.D.C.C. § 29-05-32 and N.D.C.C. § 29-29-22, the district court

239 may declare confidential the complaint, any associated arrest or search warrant, and
240 supporting records. Unless there is an order under N.D.C.C. § 29-29-22, a search warrant
241 and supporting records are only confidential until the warrant has been executed. An
242 arrest warrant and supporting records are not confidential without an order under
243 N.D.C.C. § 29-05-32.

244 Section 4. Limiting Access to Case Records.

245 (a) Request to Restrict Access.

246 (1) A request to the court to declare a case record to be a confidential record
247 may be made by any party to a case, by the individual about whom
248 information is present in the case record, or on the court's own motion on
249 notice as provided in subsection 5(f)(3).

250 (2) The court must decide whether there are sufficient grounds to overcome
251 the presumption of openness of case records and prohibit access according
252 to applicable law.

253 (3) In deciding whether to restrict access the court must consider that the
254 presumption of openness may only be overcome by an overriding interest.
255 The court must articulate this interest along with specific findings sufficient
256 to allow a reviewing court to determine whether the closure order was
257 properly entered. Considerations should include:

- 258 (A) the risk of injury to individuals,
- 259 (B) individual privacy rights and interests,
- 260 (C) proprietary business information, and

261 (D) public safety.

262 (4) Any access restriction must be no broader than necessary to protect the
263 articulated interest. The court must consider reasonable alternatives
264 declaring a record confidential, such as redaction or partial restrictions, and
265 the court must make findings adequate to support the restriction. The court
266 may not deny access to an entire record solely on the ground that the record
267 contains confidential or closed information.

268 (5) In restricting access the court must use the least restrictive means that
269 will achieve the purposes of this rule and the needs of the requestor.

270 (6) If a victim, as defined in N.D. Const. Art. I, § 25(4) requests, all victim
271 contact information in a criminal case record must be redacted.

272 (7) If the court concludes, after conducting the balancing analysis and
273 making findings as required by subsection 4(a)(3), that the interest of
274 justice will be served, it may prohibit remote access to an individual
275 defendant's electronic case record in a criminal case:

276 (A) if the charges against the defendant are dismissed; or

277 (B) if the defendant is acquitted.

278 If the court grants a request to restrict remote access to an electronic case record in
279 a criminal case, the search result for the record must display the words "Internet Access
280 Prohibited under N.D. Sup. Ct. Admin. R. 41." Such records remain available by in-
281 person request at a court facility.

282 (b) Request for Access.

283 (1) A request for access to a confidential record or a record previously
284 withheld as exempt may be made by any member of the public or access
285 may be considered on the court's own motion after notice as provided in
286 subsection 4(c).

287 (2) In deciding whether to allow access, the court must consider whether
288 there are sufficient grounds to grant access under applicable constitutional,
289 statutory and case law. In deciding this the court must consider the
290 standards outlined in subsection 4(a).

291 (c) Form of Request.

292 (1) A request under this section must be made by a written motion to the
293 court.

294 (2) If the request is for a case record, the requestor must give notice to all
295 parties in the case.

296 (3) The court must require notice to be given by the requestor or another
297 party to any identified victims in a criminal case and any individuals or
298 entities identified in the information that is the subject of the request. When
299 the request is for access to information to which access was previously
300 prohibited under subsection 4(a), the court must provide notice to the
301 individual or entity that requested that access be prohibited.

302 Section 5. Methods of Access to Court Records.

303 (a) Methods of Access.

304 Unless otherwise provided in this rule, access to records will be consistent with the
305 terms of N.D.C.C. § 44-04-18.

306 (b) Remote access.

307 In order to reduce administrative burden on the court and to provide greater public
308 access to records, the court may provide remote access to court records that are not
309 confidential records.

310 As a result of insufficient compliance with redaction requirements, the following
311 records are not available through remote access:

312 (1) Any document not available by remote public access prior to January 1,
313 2020;

314 (2) Transcripts prepared for an appeal where there has been an assertion of
315 rights in the trial or appellate court under Article I, Section 25, of the North
316 Dakota Constitution;

317 (3) Audio or video recordings;

318 (4) Documents received but not filed by the clerk of the supreme court or
319 district court.

320 (c) Access to court records at a court facility.

321 (1) A public access terminal will be available at each county courthouse for
322 use by the public to access to court records stored in the Odyssey system.

323 Upon receipt of a request for court records, court personnel may initially
324 direct the person requesting records to the public access terminal.

325 (2) Request for access to other records. Any person desiring public access
326 to a court record that is not available on the public access terminal may
327 request the record from the clerk of court or the state court administrator. If
328 a request is not in writing, court staff may require a written clarification if
329 disclosure of the records requires evaluation by the court. The request must
330 clearly identify the record requested so that the record custodian can locate
331 the record with reasonable effort. Continuing requests for a document not
332 yet in existence may not be considered. The record custodian may not ask
333 the motive or reason for requesting the records or for the identity of the
334 person requesting public records.

335 (d) Response to request to access case records.

336 A clerk of court is not required to allow access to more than ten case files per day
337 per requestor but may do so in the exercise of the clerk's discretion if the access will not
338 disrupt the clerk's primary function. If a request for access and inspection is granted, the
339 clerk may set reasonable time and manner of inspection requirements that ensure timely
340 access while protecting the integrity of the records and preserving the affected office
341 from undue disruption. The inspection area must be within full view of court personnel
342 whenever possible. A person inspecting records will be directed to remain in the court
343 facility until the records are returned and examined for completeness.

344 (e) Response by court to request to access case records.

345 If a clerk determines there is a question about whether a case record may be
346 disclosed, or if a written request is made under subsection 4(a) for a ruling by the court

347 after the clerk denies or grants an access request, the clerk must refer the request to the
348 court for determination. The court must use the standards listed in subsection 4(a) to
349 determine whether to grant or deny the access requested.

350 (f) Response to request to access administrative records.

351 The state court administrator may set reasonable time and manner of inspection
352 requirements that ensure timely access while protecting the integrity of administrative
353 records and preserving the affected office from undue disruption. If there is doubt about
354 whether an administrative record may be an exempt record or a confidential record, the
355 matter must be referred to the state court administrator for determination. The state court
356 administrator must use the standards listed in subsection 4(a) to determine whether to
357 allow access to the record.

358 Section 6. Obligations of Vendors Providing Information Technology Support to a
359 Court to Maintain Court Records.

360 (a) If the court contracts with a vendor to provide information technology services
361 to gather, store, or provide access to court records, the contract must require the vendor to
362 comply with this rule. For purposes of this section, “vendor” includes a state, county or
363 local governmental agency that provides information technology services to a court.

364 (b) By contract the vendor will be required to notify the court of any requests for
365 compiled information or bulk distribution of information, including the vendor’s requests
366 for such information for its own use.

367 EXPLANATORY NOTE

368 Rewritten rule incorporating open records procedures from the North Dakota
369 Century Code adopted November 1, 2022; amended effective March 1, 2023; March 1,
370 2025. Rewritten rule adopted effective January 1, 2020. Previous rule adopted on an
371 emergency basis effective October 1, 1996; Amended and adopted effective November
372 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; March 15, 2009; March 1, 2010;
373 March 1, 2012; March 1, 2015; March 1, 2016; October 1, 2016; March 1, 2017; May 1,
374 2017; and August 1, 2017.

375 The court anticipates this rule will be reviewed regularly to preserve the
376 appropriate balance between public access to government records and legally protected
377 security and privacy interests.

378 Records stored on an electronic communications device for a non-governmental
379 purpose permitted by N.D. Supreme Court Policy 121 are not subject to disclosure under
380 this rule.

381 Nothing in this rule or N.D.R.Ct. 3.4 precludes a clerk of court or the electronic
382 case management system from identifying non-confidential records that match a name
383 and date of birth or a name and social security number.

384 Appendix amended effective August 1, 2001, to reflect the name change of State
385 Bar Board to State Board of Law Examiners. Appendix amended effective August 1,
386 2017, to add a reference to N.D.C.C. § 14-05-24.3 and to remove a reference to § 50-06-
387 05.1. Appendix amended effective January 1, 2020 to add a reference to N.D.C.C. ch. 12-
388 60.1 and 12.1-34; §§ 12.1-41-14, 14-02.1-03.3; ch. 14-09.3; §§ 14-12.2-24, 14-20-35, 27-

389 20-51, 27-20.1-22 and 30.1-28-03.1; N.D.R.Juv.P. 17 and 19, Administrative Rules 44
390 and 54; Admission to Practice R. 13 and N.D.R. Lawyer Discipl. 1.2 and 6.1.

391 SOURCES: Court Services Administration Committee Minutes of January 18,
392 2019; January 26, 2018; November 3, 2017, pages 2-3; September 22, 2017, pages 1-3;
393 January 26-27, 2017, page 17; August 14, 2015, September 23, 2015. Joint Procedure
394 Committee Minutes of January 26, 2024, page 4; April 28, 2023, pages 2-5; January 12,
395 2023, pages 2-3; September 28, 2018, pages 18-19; April 27, 2017, pages 7-11;
396 September 29-30, 2016, pages 6-9, 28-29; May 12-13, 2016, pages 22-25; January 28-29,
397 2016, pages 2-7; September 24-25, 2015, pages 15-16, 20-21; April 23-24, 2015, pages
398 8-10; April 24-25, 2014, page 27; April 28-29, 2011, pages 9-12; September 23-24, 2010,
399 pages 16-20; September 24-25, 2009, pages 8-9; May 21-22, 2009, pages 28-44; January
400 29-30, 2009, pages 3-4; September 24, 2008, pages 2-6; January 24, 2008, pages 9-12;
401 October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005,
402 pages 6-16; April 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January 29-
403 30, 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-12.
404 Court Technology Committee Minutes of June 18, 2004; March 19, 2004; September 12,
405 2003; Conference of Chief Justices/Conference of State Court Administrators: Guidelines
406 for Public Access to Court Records; National Center for State Courts and State Justice
407 Institute Best Practices for Court Privacy Policy Formulation.

408 STATUTES AFFECTED:

409 CONSIDERED:

410 N.D. Const. Art. I, §§ 9, 12, & 25, Art. XI, § 6; N.D.C.C. ch. 44-04.

411 CROSS REFERENCE:

412 Statutes, court rules and policies, and federal regulations making certain records

413 confidential, in whole or in part, include the following.

414 North Dakota Century Code

415 12-60.1 Sealing Criminal Records

416 12.1-32-07.2(2) Records and papers concerning deferred imposition of sentence

417 when guilty plea is withdrawn or guilty verdict set aside

418 12.1-32-09(3) Notice specifying defendant as a dangerous special offender for

419 sentencing purposes

420 12.1-34 Fair treatment standards for victims and witnesses

421 12.1-35-03 Information identifying a child victim of a crime

422 12.1-41-14 Motion to vacate and expunge conviction

423 14-02.1-03.1(3), (4), (11) Records involving judicial authorization for abortion for

424 unmarried minor

425 14-02.1-03.3 Privacy of woman upon whom an abortion is performed or attempted

426 14-05-24.3 Property and debt listing in a divorce case

427 14-09.3 Uniform Deployed Parents Custody and Visitation Act

428 14-09.1-06 Mediation proceedings concerning contested child support, custody or

429 visitation

430 14-09.2-06 Parent Coordinator proceedings

431 14-12.2-24 Nondisclosure of information

432 14-15-16(4) Adoption proceedings

433 14-15.1 Child Relinquishment to Identified Adoptive Parent proceedings

434 14-20-35 Confidentiality of genetic testing

435 14-20-54 Paternity proceedings

436 23-07.6-11 Confinement proceedings for those with communicable diseases

437 23-02.1-27 Certain information in birth and death certificates

438 25-03.1-43 Mental health commitments

439 25-03.3-03 Commitment proceedings for sexually dangerous individuals

440 ~~27-20-51 Juvenile court records~~

441 27-09.1-12(4) Jury selection records

442 ~~27-20-51~~27-20.2-21 Inspection of juvenile court files and records

443 27-20.1-22 Confidentiality of Guardianship of a Child

444 29-10.1-30, -31 Grand jury proceedings

445 30.1-11-01 Wills deposited for safekeeping

446 30.1-28-03.1 Confidentiality - Reports - Personal information

447 37-01-34 Recorded military discharge papers

448 39-08-01.6 Criminal record – Seal – Exception

449 39-33-05 Permitted disclosures of department of transportation records

450 40-38-12 Library records – Open records exception

451 Court Rules and Policies

452 N.D.R.Ct. 3.4 (Privacy Protection for Filings Made with the Court)

453 N.D.R.Civ.P. 26(c) Protective orders

454 N.D.R.Crim.P. 32(c) Presentence investigation reports

455 N.D.R.Crim.P. 32.1 Deferred imposition of sentence records

456 N.D.R.Crim.P. 44(b) Ex parte application for financial assistance

457 N.D.R.Juv.P. 17 Juvenile Court Lay Guardian Ad Litem

458 N.D.R.Juv.P. 19 Juvenile Records

459 N.D. Sup. Ct. Admin. R. 19 Court Records Management

460 N.D. Sup. Ct. Admin. R. 40 Access to Recordings of Proceedings in District Court

461 Administrative Rule 44 Informal Complaint Procedure

462 Administrative Rule 54 Judicial Ethics Advisory Committee

463 Administrative Policy 120 Personnel Records

464 Administrative Policy 121 Electronic Communication Devices

465 Admission to Practice R. 13 Public Records

466 N.D.R. Lawyer Discipl. 1.2 Grounds for Discipline

467 N.D.R. Lawyer Discipl. 6.1 Records

468 R. Jud. Conduct Comm. 6 Confidentiality of Proceedings

469 Federal Regulations

470 22 C.F.R. Section 51.33 Passport records

471 42 C.F.R. Part 2 Substance Use Treatment Records

472 45 C.F.R. Part 164 Mental Health Records

RULE 58. VEXATIOUS LITIGATION

Section 1. Purpose.

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

Section 2. Definitions.

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

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

(c) “Vexatious conduct” means conduct that:

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

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

45 and such conduct is frivolous or intended to cause unnecessary
46 burden, expense, or delay; or

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

49 Section 3. Procedure-Designate Vexatious Litigant.

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

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

61 (c) The pre-filing order may:

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

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

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

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

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

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

75 Section 4. Procedure-New Litigation and Subsequent Filings.

76 (a) In order to file new litigation or documents into existing litigation, a vexatious
77 litigant must file an application for leave to file using the form approved by the state
78 court administrator. The documents the vexatious litigant seeks to file must be submitted
79 separately from the application for leave to file. The documents the vexatious litigant
80 seeks to file will not be docketed unless the court grants the application for leave to file.

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

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

87 (d) The clerk may not file any litigation presented by a vexatious litigant subject to
88 a pre-filing order unless the vexatious litigant first obtains an order permitting the filing.
89 If the clerk mistakenly files the litigation without the order, any party may file a notice
90 stating that the plaintiff or complaining party in a disciplinary proceeding is a vexatious
91 litigant subject to a pre-filing order. The filing of such notice automatically stays the
92 litigation. The litigation must be dismissed or denied unless the plaintiff or complainant,
93 within 10 days of the filing of the notice, obtains an order permitting the litigation to
94 proceed. If a party is served with new litigation but the action is not filed with the clerk,
95 the party served is not required to respond to the new litigation unless the vexatious
96 litigant obtains an order allowing the litigation to be filed and files and serves the new
97 litigation.

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

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

103 Section 5. Sanctions.

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

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

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

111 Section 6. Appeal.

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

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

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

118 Section 7. Supreme Court Order.

119 The supreme court may, on the court's own motion or the motion of any party to
120 an appeal, enter a pre-filing order prohibiting a vexatious litigant from filing any new
121 litigation in the courts of this state as a self-represented party without first obtaining leave
122 of a judge of the court where the litigation is proposed to be filed. If the supreme court
123 finds that there is a basis to conclude that a person is a vexatious litigant and that a pre-
124 filing order should be issued, the court must issue a proposed pre-filing order along with
125 the proposed findings supporting the issuance of the pre-filing order. The person who
126 would be designated as a vexatious litigant in the proposed order will have 14 days to file
127 a written response to the proposed order and findings. If a response is filed, the supreme
128 court may, in the court's discretion, grant a hearing on the proposed order. If no response
129 is filed within 14 days, or if the supreme court concludes following a response and any

130 subsequent hearing that there is a basis for issuing the order, the supreme court may issue
131 the pre-filing order.

132 Section 8. Electronic Filing.

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

137 Section 9. Roster.

138 The clerk of court must provide a copy of any pre-filing order issued under this
139 rule to the state court administrator who will maintain a list (link to current list) of
140 vexatious litigants subject to pre-filing orders.

141 Prior Rosters:

142 [Insert links to prior rosters]

143 Section 10. Effect of Pre-Filing Order.

144 A pre-filing order entered under this rule supersedes any other order limiting or
145 enjoining a person's ability to file or serve papers or pleadings in any North Dakota state
146 court litigation.

147 EXPLANATORY NOTE

148 Rule 58 was rewritten and adopted effective, March 1, 2025. Previous rule was
149 adopted effective March 1, 2017; amended effective June 21, 2017; August 11, 2021;
150 September 1, 2022; January 25, 2023.

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

154 STATUTES AFFECTED:

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

RULE 10.2. ADMISSIONS

(a) In General. At any time after a petition is filed, a child may enter an admission to some or all of the delinquent acts charged.

(b) Admission. Advisement to Child.

(1) The juvenile court may not accept an admission without first, by addressing the child personally, informing the child of and determining that the child understands the following:

(A) the right to deny the allegation(s) that a delinquent act was committed, or having already denied any offense, to persist in that denial;

(B) the right to a hearing before a judge or judicial referee and understands what occurs at a hearing;

(C) the right to be represented by counsel at every stage of the proceeding and, if applicable, the right to have the counsel provided under N.D.C.C. § 27-20.2-12;

(D) the right at a hearing to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(E) the child's waiver of these rights if the court accepts an admission;

23 (F) the nature of each offense to which the child is admitting and
24 understands what it means to admit; and
25 (G) whether there are any other concerns apparent to the court after
26 such inquiry that should be answered.

27 (2) Ensuring the Admission is Voluntary. Before accepting an admission,
28 the court must address the child personally, and determine that the
29 admission is voluntary and did not result from force, threats, or promises
30 other than promises in the terms of an admission.

31 (3) Determining the Factual Basis for an Admission. Before entering an
32 order of adjudication on an admission, the court must determine that there
33 is a factual basis.

34 (4) Acknowledgment by Child. Before entering an order of adjudication on
35 admission, the court must determine the child acknowledges facts exist that
36 support the admission.

37 (5) Disposition. The court must determine the child understands the court's
38 authority to make a disposition if the court accepts the admission,
39 including:

40 (A) the authority to impose a disposition necessary to ensure the
41 child receives appropriate treatment or rehabilitation, repair harm
42 caused to the victim or community, ensure safety of the community,
43 such order may include: the periodic testing for the use of illicit
44 drugs or alcohol, treatment, participation in a juvenile drug court

45 program, probation supervision and conditions, suspension of
46 driving privileges, commitment to the division of juvenile services,
47 monetary restitution, community service, or may order a child over
48 eighteen years of age to serve a term of probation under the
49 supervision of the department of corrections and rehabilitation,
50 (B) the potential for offender registration, for the loss of firearm
51 possession rights, and that a juvenile who is not a United States
52 citizen may be removed from the United States, denied citizenship,
53 and denied admission to the United States in the future, and
54 (C) the potential for enhanced penalties for a subsequent delinquent
55 act or offense committed as an adult.

56 (c) Withdrawing an Admission. The child may, on the record or by written motion
57 filed with the court, request to withdraw an admission. The court may allow the child to
58 withdraw an admission:

59 (1) before disposition, if it is fair and just to do so, giving due consideration
60 to the reasons the child gives and any prejudice that withdrawal of the
61 admission would cause because of actions taken in reliance on the child's
62 admission; or

63 (2) at any time, upon showing that withdrawal is necessary to correct a
64 manifest injustice.

65 EXPLANATORY NOTE

66 Rule 10.2 was adopted, effective March 1, 2025.

67 This rule is derived from N.D.R.Crim.P. 11 and Minn. R. Juv. Del. P. 8.04.

68 SOURCES: Juvenile Policy Board Minutes of September 22, 2023. Joint
69 Procedure Committee Minutes of January 26, 2024, pages 4-6; September 28, 2023,
70 pages 10-11. N.D.R.Crim.P. 11 and Minn. R. Juv. Del. P. 8.04.

71 CROSS REFERENCE: N.D.C.C. § 27-20.2-12, -13; ch. 27-20.4; N.D.R.Juv.P.
72 11.1, 18; N.D. Sup. Ct. Admin. R. 13.