

2013 SENATE JUDICIARY

SB 2077

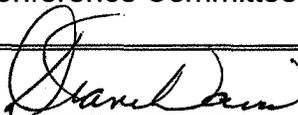
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2077
1/9/2013
17047

Conference Committee

Committee Clerk Signature



Minutes:

Attached written testimony

Relating to fees for transcripts

Senator David Hogue - Chairman

Sally Holewa - ND State Court Administrator - See written testimony

Senator Hogue - Asks if both rule and policy are necessary.

Holewa - Responds that it is set by policy and there is not a corresponding rule.

Senator Hogue - Asks if in the future they would want the ability to make a separate rule.

Holewa - Replied no and that it was just an oversight.

Senator Sitte - Asks why it isn't available electronically.

Holewa - Responds that some hearings are recorded and others are taken by court reporters on steno machines. They do sell the audio version if people would like it. She continues to explain that copies do need to be cleaned up before they are ready.

Senator Sitte - Asks rather than charging citizens \$2.50 per page why it couldn't be e-mailed.

Holewa - Says that transcripts are not typically done for most proceedings and are not readily available. It is not mandated for hearings. She says there a few times where a Judge may ask for one and once they are filed they are e-filed into the electronic system and are available at that point.

Senator Hogue - Said as he understands there is some time expense for the court reporter to actually prepare the transcript and that is what the \$2.50 is for.

Holewa - Agreed and says that the court reporters do this after hours.

Senator Hogue - Said he thinks .50 per page is high and asks when it went to that amount.

Holewa - Replies it went into effect in 2001 and was a recommended rate from the Attorney General's opinion. At that time cost to produce was 2.90 per page plus .50 per page for copy.

Senator Berry - Asks who pays for the afterhours work.

Holewa - Replies it is paid by the litigant. In the case of an indigent there is no cost and the reporter is allowed to work on those during work hours. She said when it is a paid transcript it is considered a completely separate function than the normal reporters job.

Senator Nelson - States the intent of the bill is still to take out the archaic language out of the bill and to say you are setting it by policy so there is not a conflict. She gives the example of like a board setting fees.

Senator Hogue - Asks if the court considered repealing the statute entirely instead of just taking out the per page charge. He thinks everything in the statute could be covered by policy 206.

Holewa - She said the court chose not to do that and she was unsure why.

Chairman calls for opposition

None

Chairman calls for neutral

Steve Cates - Citizen - Explains how he has paid out thousands of for transcripts and thinks there should be something more modern. He proposes an amendment.

Senator Hogue - Reads through the amendment and mentions that it could be a stand-alone bill or could be attached to another bill. He asked to stay with the bill before them.

Close the hearing on 2077

Discussion

Senator Sitte asks Holewa to explain how transcripts are produced in District Court. Holewa replies that there are many technologies out there and District Courts need to be technologically advanced for different reasons. She explains that some court reporters are certified to do "real time" and the Judge can have a link-up between their computer and the court reporters so they can see what has been said. She goes on to say other court reporters still use the old technology. She says the difference between what the District Court and the Supreme Court does is that the Supreme Court is set up for live streaming and it is archived that way. Senator Sitte wonders if is possible for the Supreme Court to progress toward making transcripts more readily available. Holewa replies they have looked at this a lot. Senator Nelson mentions even if it was a more streamlined system it still cannot go with what is in the code. The code needs to be changed before they have the latitude to go any further. She goes on to say the bill says it takes that amount out of Code, it doesn't have anything to do with what the Supreme Court will do with their policy. She said she is in favor of taking out paper and margin sizes. Senator Hogue says the proposed

bill eliminates the ambiguity by saying the rate will be set by rule or policy of the Supreme Court. Senator Armstrong says this bill is essentially eliminate confusion and to incorporate what is currently being done and is allowed by law into the Century Code. He goes on to say this is not the place for discussion to change the Court system and that would have to be another bill. This bill just cleans up what is already going on. Senator Grabinger asks if this is something that we should be micro-managing or if the whole thing is antiquated and should be removed. Senator Hogue decides to leave the bill open pending an answer on why this whole statute shouldn't be repealed.

Chairman closes committee meeting.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2077
1/15/2013
Job #17203

Conference Committee

Committee Clerk Signature



Minutes:

Attachment

Relating to fees for transcripts

Senator David Hogue - Chairman

Discussion on SB2077

Senator Hogue - Explains the amendment his has brought for SB2077. Senator Armstrong says he agrees with the amendment because as technology advances and the Supreme Court needs to adapt to it. Senator Nelson said they heard the Chief Justice say that they are trying to get into the technical age and this would be a good start.

Senator Nelson moves do pass on the amendment
Senator Berry seconds

Vote - 7 yes, 0 no

Adopt - amendment 13.8026.01001

Senator Nelson moves a do pass as amended
Senator Armstrong seconded

Vote - 7 yes, no 0

Senator Nelson will carry

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2077
1/16/2013
Job #17284

Conference Committee

Committee Clerk Signature 

Minutes:

Senator David Hogue - Chairman

Committee work

Committee discusses the Supreme Court setting a price per page policy or rule. They decided they do not need to re-amend what they did the previously. They agree that technologically it is an outdated statute.

January 15, 2013


1/15/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2077

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 27-06-06 of the North Dakota Century Code, relating to fees for transcripts; and to repeal section 27-06-08 of the North Dakota Century Code, relating to fees for transcripts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-06-06 of the North Dakota Century Code is amended and reenacted as follows:

27-06-06. Transcript in criminal action prepared at expense of state - Filing and use of transcript.

A judge of a district court in which a criminal action or proceeding has been tried, on that judge's own motion or on application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, to be made by the reporter at state expense whenever there is reasonable cause therefor. The transcript, when prepared, must consist of one copy to be filed in the office of the clerk of court, one copy for each party separately represented, and, if the defendant is sentenced to the legal and physical custody of, or placed under the supervision and management of, the department of corrections and rehabilitation, one copy to the department. ~~The court reporter shall~~ individual preparing the transcript is entitled to receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08 rules and policies adopted by the supreme court.

SECTION 2. REPEAL. Section 27-06-08 of the North Dakota Century Code is repealed."

Renumber accordingly

Date: 1-15-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2077**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8026.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Nelson Seconded By S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/15
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2697**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8026.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By S. Nelson Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2077: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2077 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 27-06-06 of the North Dakota Century Code, relating to fees for transcripts; and to repeal section 27-06-08 of the North Dakota Century Code, relating to fees for transcripts.

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SECTION 1. AMENDMENT. Section 27-06-06 of the North Dakota Century Code is amended and reenacted as follows:

27-06-06. Transcript in criminal action prepared at expense of state - Filing and use of transcript.

A judge of a district court in which a criminal action or proceeding has been tried, on that judge's own motion or on application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, to be made by the reporter at state expense whenever there is reasonable cause therefor. The transcript, when prepared, must consist of one copy to be filed in the office of the clerk of court, one copy for each party separately represented, and, if the defendant is sentenced to the legal and physical custody of, or placed under the supervision and management of, the department of corrections and rehabilitation, one copy to the department. ~~The court reporter shall~~ individual preparing the transcript is entitled to receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08 ~~rules and policies adopted by the supreme court.~~

SECTION 2. REPEAL. Section 27-06-08 of the North Dakota Century Code is repealed."

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2077

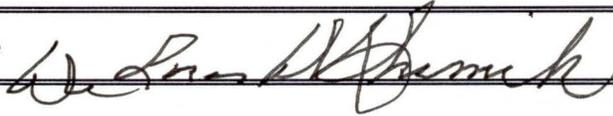
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2077
March 19, 2013
Job # 20148

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to fees for transcripts.

Minutes:

Testimony #1

Vice Chairman Larry Klemin opened the hearing on SB 2077.

Sally Holewa, North Dakota State Court Administrator: (See testimony #1) 02:21 - 05:23

Rep. Vicky Steiner: You did change the price even though the cost is in law? Do what rule did you use to do that?

Sally Holewa: The Chief Justice by constitutional authority has the authority over administrative matters in the court so he used this to issue a policy change.

Rep. Kathy Hogan: Do you know the history of the chapter?

Sally Holewa: I do not know. It predates the courts ability to make its own rules. It has been there a long time.

Opposition: None

Neutral: None

Vice Chairman Klemin: We are not going to take any action on this bill. We are going to wait until we have the hearing on SB 2272 and then we will look at both bills at the same time.

Hearing closed.

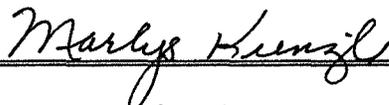
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2077
March 27, 2013
Job # 20560

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:
Relating to Fee for Transcripts.

Minutes:

You may make reference to "attached testimony."

The recording starts at 10:04 on Job # 20560.

Chairman Koppelman: Opened the meeting 2077

Rep Delmore: Made a motion of Do Not Pass on SB 2077.

Rep Boehing: Seconded the motion.

Do Not Pass Yes 14 No 0 Absent 0 Carrier is Rep Hanson

Chairman Koppelman: Closed the hearing.

Date: 3-27-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2077

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2077, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2077 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2077

SENATE JUDICIARY COMMITTEE

**Testimony of Sally Holewa
North Dakota State Court Administrator**

January 9, 2013

Good morning Chairman Hogue and members of the Senate Judiciary Committee. For the record, my name is Sally Holewa. I am the North Dakota State Court Administrator. I am appearing today in support of SB 2077.

SB 2077 was introduced at the request of the Supreme Court for the purpose of removing the specific dollar amounts contained in NDCC § 27-06-08, which is the statute on fees that can be charged for transcripts of court proceedings.

The current statute includes dollar amounts for transcript rates as \$1.90 per page for the original, 35 cents per page for the first copy, and 15 cents per page for any additional copies, but also gives the supreme court the authority to set a different rate. In 1982, the supreme court adopted Policy 206 which incorporated the rates set by statute. Since then, the policy has been amended once, in 2001, to increase the rates. The current rates are \$2.50 per page for the original transcript and 50 cents per page for copies. A copy of the policy is attached. Although it has been more than 10 years since the rate was increased, we are not considering any changes to the rate at this time.

The reason we are requesting the change is to eliminate any confusion for the public who may be interested in purchasing a transcript. The change does not give the Supreme Court any additional authority but will provide clear direction to the public that they should contact the court to determine the current rate.

I would be happy to answer any questions you may have.

UNIFIED JUDICIAL SYSTEM

Policy 206

Effective July 1, 2010

FEES AND EXPENSES FOR PREPARATION OF TRANSCRIPTS

FEES

A. Fees.

1. For the preparation of a transcript from shorthand notes or recording device, except as indicated below, the court reporter or other individual employed by the judiciary to prepare a transcript is entitled to receive per page compensation of \$2.50 for the original, and \$.50 for copies. Time spent in preparation of transcripts in which a per page compensation is allowed is not eligible for overtime compensation and should ordinarily be outside of regular business hours.
2. The court reporter or other individual employed by the judiciary shall not receive per page compensation for the preparation of the following:
 - a. Criminal or juvenile case transcripts requested by the Indigent Defense Commission for the purpose of appeal or for any court proceeding that occurred prior to the appointment of counsel;
 - b. Criminal or juvenile case transcripts requested by the state's attorney for the purpose of appeal;
 - c. Transcripts of the judge's and state's attorney's official statements to the Pardons Advisory Board; and
 - d. Transcripts prepared at the direction of a district court judge or referee.

Preparation of the transcript is defined as an original and one copy to be filed in the office of the clerk, one copy for each party separately represented, and, if parole or probation be granted, one copy to the division of parole and probation.

3. A fee of \$5 per computer diskette containing a transcript may be received if the court reporter or other individual employed by the judiciary has prepared

a transcript under this policy. If no transcript has been previously prepared, the court reporter or other individual employed by the judiciary is entitled to receive the per page compensation outlined in subsection 1 for preparation of the transcript and copying to computer diskettes.

EXPENSES

A. Expenses Associated With Recording the Proceeding.

The state will pay for expenses associated with recording the proceedings and maintenance of stenographic equipment owned by the state.

B. Expenses and Equipment Use.

1. The court reporter may use the court reporter's equipment or state-owned CAT equipment.
2. The court reporter or other individual employed by the judiciary to prepare a transcript will be responsible for costs associated with producing a transcript if entitled to a fee for preparing the transcript, including paper, copying, binding, etc. The state will pay for associated expenses if there is no fee compensation.

C. Computer-CAT System.

The state court administrator may approve the purchase of computers, software, stenowriters, and other CAT related expenditures upon approval of a statewide CAT implementation plan.

Approved by Supreme Court 10/20/82; amended 07/01/97; amended 09/30/98; amended 03/21/01
amended 11/06/02; amended 08/03/05; amended 06/27/07; amended 06/24/10 effective 07/01/10

2017- Z
Cates

27-02-27. Judicial Records Access

The North Dakota Supreme Court shall ensure that audio recordings of all tribunals under the court's supervision be created and retained by the court. Tribunal audio recordings shall be maintained as a generally accepted digital audio format file. All audio recordings of tribunals which are observable by the public shall be archived by the court and made available to the public in the form of downloadable files which can be obtained from the court's website. Tribunal recordings made available on the court's website shall be accessible for download by the close of the business day subsequent to the day of creation of each tribunal recording. All tribunal audio recordings shall be retained as specified by NDCC 54-46.

January 15, 2013

13.8026.01000
Sixty-third
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT SENATE BILL NO. 2077

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an act to repeal section 27-06-08 of the North Dakota Century Code, relating to fees for transcripts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 27-06-08 of the North Dakota Century Code is repealed.

Renumber Accordingly



North Dakota Supreme Court Rules N.D. Sup. Ct. Admin. R.
◀▲□/?

Rule 39
Amended Effective March 1, 1998
[\[Go to previous rule.\]](#)

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Administrative Rule 39 - RECORDING DISTRICT COURT TRIALS AND PROCEEDINGS, AND PREPARING TRANSCRIPTS

SECTION 1. AUTHORITY

Under Article VI, Section 3 of the North Dakota Constitution, 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 under 27-02-05.1, NDCC.

SECTION 2. PRESERVING THE RECORD

The record of testimony and proceedings of the district court must be preserved using audio-recording devices, video-recording devices, or stenographic shorthand notes. All electronic recording devices must meet the minimum specifications established in administrative policies.

SECTION 3. FILING

The operator of the recording device or court reporter must file the original tape or shorthand notes of the proceeding with the clerk of district court at the conclusion of the trial or proceeding or as soon thereafter as is practical.

The date(s) and case number(s) must be indicated on the tape or shorthand notes in such a manner that the clerk may establish an index and filing system.

SECTION 4. ACCESS TO ORIGINALS

A. Employees

An employee of the district court, or other individual under contract with the court, who is charged with preparing the transcript may withdraw the original tape or shorthand notes for a reasonable period of time for the purpose of preparing the transcript. The clerk must indicate any withdrawal in the case file.

B. Non-Employees

1. If the court reporter who attended the proceeding is not able to prepare the transcript, the court may order that another person



be allowed to withdraw the original shorthand notes.

2. If the proceeding was recorded electronically, a copy of the original tape will be forwarded for transcription.

SECTION 5. TRANSCRIPT - DUTY TO PREPARE

A. Court Reporter

The court reporter of any district court in which a criminal or civil action or proceeding has been tried shall prepare a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, upon receiving an order from the court or an order for transcript from the clerk of district court and upon payment of fees as provided by court rule or when requested to do so by any party with the approval of the presiding judge and upon payment of fees as provided by court rule.

B. Electronic Recordings

Each district shall establish procedures to ensure that transcripts of proceedings which are recorded electronically, are prepared in accordance with time lines established in the North Dakota Rules of Appellate Procedure.

SECTION 6. CRIMINAL ACTION PREPARED AT STATE EXPENSE

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

SECTION 7. FORM OF TRANSCRIPT

The transcript must be prepared in the form prescribed by Rule 10, NDRAppP.

SECTION 8. CERTIFICATION

The transcript must be certified by the person preparing the transcript in accordance with Rule 10, NDRAppP.

SECTION 9. FEES

A. Individuals Employed by the Judiciary

Court reporters and other individuals employed by the judiciary to make the record shall receive a transcript preparation fee as

established by administrative policy.

B. Non-Judicial Employees

If the transcript is prepared by an individual who is not a judicial employee, payment will be made directly to the preparer, at a rate not to exceed administrative policy, and in accordance with Rule 10, NDRAppP.

C. Originals and Copies

The original shorthand notes or tape of the proceeding are the property of the State of North Dakota and must be filed with the clerk of court. The transcript is the property of the State of North Dakota after it has been filed with the clerk of district court or clerk of the Supreme Court.

EXPLANATORY NOTE

Administrative Rule 39 was adopted, effective March 1, 1995; amended effective July 1, 1997; March 1, 1998.

SOURCES: Joint Procedure Committee Minutes of January 30, 1997, pages 9-10.

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HOUSE JUDICIARY COMMITTEE

Testimony of Sally Holewa North Dakota State Court Administrator

March 19, 2013

Good morning Chairman Koppelman and members of the House Judiciary Committee. For the record, my name is Sally Holewa. I am the North Dakota State Court Administrator. I am appearing today on SB 2077. We are asking that the committee give a Do Not Pass to SB 2077 and support SB 2272 instead.

SB 2077 was introduced at the request of the Supreme Court for the purpose of removing the specific dollar amounts contained in NDCC § 27-06-08, which is the statute on fees that can be charged for transcripts of court proceedings.

The current statute includes dollar amounts for transcript rates as \$1.90 per page for the original, 35 cents per page for the first copy, and 15 cents per page for any additional copies, but also gives the Supreme Court the authority to set a different rate. In 1982, the Supreme Court adopted Policy 206 which incorporated the rates set by statute. Since then, the policy has been amended once, in 2001, to increase the rates. The current rates are \$2.50 per page for the original transcript and 50 cents per page for copies. A copy of the policy is attached. Although it has been more than 10 years since the rate was increased, we are not considering any changes to the rate at this time. We requested this to eliminate any confusion for the public who may be interested in purchasing a transcript.

As proposed, SB 2077 included only that change. The bill was amended in the Senate to also move the language on fees from § 27-06-08 to § 27-06-06, and to repeal § 27-06-08 in its entirety.

At the same time, members of the Senate Judiciary Committee put forth an alternative to SB 2077. That alternative is SB 2272. SB 2272 would repeal all of chapter 27-06. Several of the committee members felt that ch. 27-06 is no longer necessary because the items it covers all fall under the constitutional authority of

the Chief Justice as the administrative head of the judicial branch. All of the sections that would be repealed are currently covered by Court Rules, Court Policy, or employee work directives.

Under SB 2272 the sections to be repealed include:

27-06-04 – Filing of shorthand notes taken by district court reporter. This is covered by the court's Administrative Rule 39.

27-06-05 – Transcript prepared by court reporter. This is covered by the court's Administrative Rule 39.

27-06-06 – Transcript in criminal action prepared at expense of state. This is covered by the court's Administrative Rule 39 and Judicial Branch Policy 206.

27-06-07 – Certification of Transcript. This is included in the court reporter and electronic court recorder manuals.

27-06-08 – Fees for Transcript. This is covered by the court's Appellate Rule 10 and Judicial Branch Policy 206.

Therefore, the court is requesting that the committee give a DO NOT PASS to SB 2077 and a DO PASS to SB 2272. I would be happy to answer any questions you may have.

UNIFIED JUDICIAL SYSTEM

Policy 206

June 27, 2007

FEES AND EXPENSES FOR PREPARATION OF TRANSCRIPTS

FEES

A. Fees.

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2. The court reporter or other individual employed by the judiciary shall not receive per page compensation for the preparation of the following:
 - a. For the preparation of transcripts which are the business of the court.
 - b. For the preparation of transcripts prepared under Section 12-55.1-10, N.D.C.C.

"Business of the court" is defined as criminal-indigent and court-ordered transcripts. Consistent with N.D.C.C. 27-06-06 and 12-55.1-10, "preparation of the transcript" is defined as an original and one copy to be filed in the office of the clerk, one copy for each party separately represented, and, if parole or probation be granted, one copy to the division of parole and probation.

3. A fee of \$5 per computer diskette containing a transcript may be received if the court reporter or other individual employed by the judiciary has prepared a transcript under this policy. If no transcript has been previously prepared, the court reporter or other individual employed by the judiciary is entitled to receive the per page compensation outlined in subsection 1 for preparation of the transcript and copying to computer diskettes.

EXPENSES

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North Dakota Supreme Court Rules N.D. Sup. Ct. Admin. R. ◀▲□/?

Rule 39
Amended Effective March 1, 1998
[\[Go to previous rule.\]](#)

Administrative Rule 39 - RECORDING DISTRICT COURT TRIALS AND PROCEEDINGS, AND PREPARING TRANSCRIPTS

SECTION 1. AUTHORITY

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SECTION 2. PRESERVING THE RECORD

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B. Non-Employees

1. If the court reporter who attended the proceeding is not able to prepare the transcript, the court may order that another person be allowed to withdraw the original shorthand notes.
2. If the proceeding was recorded electronically, a copy of the original tape will be forwarded for transcription.

SECTION 5. TRANSCRIPT - DUTY TO PREPARE

A. Court Reporter

The court reporter of any district court in which a criminal or civil action or proceeding has been tried shall prepare a transcript of the original shorthand notes of the action or proceeding, or of any part thereof, upon receiving an order from the court or an order for transcript from the clerk of district court and upon payment of fees as provided by court rule or when requested to do so by any party with the approval of the presiding judge and upon payment of fees as provided by court rule.

B. Electronic Recordings

Each district shall establish procedures to ensure that transcripts of proceedings which are recorded electronically, are prepared in accordance with time lines established in the North Dakota Rules of Appellate Procedure.

SECTION 6. CRIMINAL ACTION PREPARED AT STATE EXPENSE

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

SECTION 7. FORM OF TRANSCRIPT

The transcript must be prepared in the form prescribed by Rule 10, NDRAppP.

SECTION 8. CERTIFICATION

The transcript must be certified by the person preparing the transcript in accordance with Rule 10, NDRAppP.

SECTION 9. FEES

A. Individuals Employed by the Judiciary

Court reporters and other individuals employed by the judiciary to make the record shall receive a transcript preparation fee as established by administrative policy.

B. Non-Judicial Employees

If the transcript is prepared by an individual who is not a judicial employee, payment will be made directly to the preparer, at a rate not to exceed administrative policy, and in accordance with Rule 10, NDRAppP.

C. Originals and Copies

The original shorthand notes or tape of the proceeding are the property of the

State of North Dakota and must be filed with the clerk of court. The transcript is the property of the State of North Dakota after it has been filed with the clerk of district court or clerk of the Supreme Court.

EXPLANATORY NOTE

Administrative Rule 39 was adopted, effective March 1, 1995; amended effective July 1, 1997; March 1, 1998.

SOURCES: Joint Procedure Committee Minutes of January 30, 1997, pages 9-10.

North Dakota Supreme Court Rules N.D.R.App.P. ◀▲□/?Effective March 1, 2011
[Go to Previous Rule.]**RULE 10. THE RECORD ON APPEAL**

(a) Composition of Record on Appeal. The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the district court;
- (2) two copies of the transcript, if any; and
- (3) a certified copy of the docket entries prepared by the clerk of district court.

(b) Order for Transcript of Proceeding.

(1) Appellant's Duty to Order. If an appeal is taken in a case in which an evidentiary hearing was held, the appellant must order a transcript of the proceedings as follows:

- (A) two copies of the transcript must be ordered for the supreme court;
- (B) one copy of the transcript must be ordered for each self-represented party and each party separately represented;
- (C) a complete transcript must be ordered, unless a stipulation is obtained from all affected parties specifying the portions that are not required for the purposes of the appeal;
- (D) a transcript of any record of jury voir dire is not required, unless specifically requested by a party; and
- (E) the order for a transcript, and a copy of the stipulation of excluded portions, if applicable, must be filed with the clerk of district court with the notice of appeal.

(2) Information for Order. An order for a transcript must include the following information:

- (A) the caption of the case;
- (B) the date or dates of trial;
- (C) the number of copies required; and
- (D) the names and addresses of the parties to be served with copies.

(3) Unreasonable Refusal to Stipulate. If a party affected by the appeal unreasonably refuses to stipulate to exclude from the transcript portions of the record not necessary to the resolution of the issues raised by the appellant, the party proposing the stipulation may apply to the district court for an order requiring the refusing party to pay for the unnecessary portions of the transcript and reasonable attorney's fees for making the application.

(4) Clerk of District Court to Transmit Order. Within seven days after an order for transcript is filed, the clerk must transmit the order to the person designated by the district court to prepare the transcript.

(c) Preparation of Transcript.

(1) Time for Furnishing Transcript. Within 50 days after the order for transcript is filed with the clerk of district court, the person preparing the transcript must complete and file the transcript with the supreme court clerk unless an extension of time is received under subdivision (d).

(2) Submission of Transcript.

(A) The person preparing the transcript must serve and file the transcript as follows:

- (i) a copy of the transcript must be served on each party designated in the order for transcript;
- (ii) proof of service of the transcript must be filed with the supreme court clerk;
- (iii) two copies of the transcript must be filed with the supreme court clerk; and
- (iv) an electronic copy of the transcript must be filed with, or the transcript must be electronically transmitted to, the supreme court clerk. All electronic transcripts must contain in a single file all the information contained in the paper transcript, including the cover, table of contents, and certifications, in the same order as in the paper transcript. The electronic transcript must include fixed line number and page numbers corresponding to those in the paper transcript.

(B) In an appeal of the determination of an administrative agency, the agency must file an electronic copy of the transcript or electronically transmit the transcript to the supreme court clerk unless the agency certifies the transcript was not prepared on a computer or word processor.

(3) Financial Arrangements. The appellant or a party obligated under paragraph (b) (3) to pay transcription costs must provide advance payment for the estimated cost of preparing the transcript, provided:

- the person preparing the transcript serves a written estimate of the cost and a demand for payment on the appellant within 14 days after receipt of the order for transcript; or
- the person preparing the transcript serves a written estimate of the cost and a demand for payment on a party obligated by court order to pay transcription costs within 14 days after receipt of the order.

If the person preparing the transcript fails to serve a timely written estimate and a timely demand for payment, the right to demand advance payment is waived. Advance payment is not required if transcription costs are to be paid by the state or an agency or subdivision of the state. If the appellant or obligated party fails to make the advance payment within 14 days after service of the demand, the person preparing the transcript may suspend preparation of the transcript until paid.

(d) Extension of Time.

(1) Good Cause. If the person preparing the transcript is unable to complete and file the transcript within 50 days after the order for transcript is filed, the district court for good cause shown may extend the time for completion of the

transcript.

If preparation of the transcript has been suspended for failure of any party to make a timely advance payment upon demand, the district court for good cause shown by the party responsible for the delay, may extend the time for completion of the transcript, on such terms as the court may order.

(2) Request for Extension. A request for an extension of time must be made within the time originally prescribed or within an extension previously granted for completion of the transcript. A district court may not extend the time for more than 90 days from the date when the first notice of appeal was filed. If the district court is without authority to grant the relief sought or has denied a request for an extension of time, the supreme court may on motion for good cause shown extend the time for completion of the transcript beyond the time allowed or fixed. If a request for an extension of time has been previously denied, the motion must set forth the denial and state the reasons for the denial, if any were given by the district court.

(e) Form of Transcript. Each transcript must conform to the requirements of Rules 31(b) (2) and 32 except as otherwise provided:

- lines must be numbered on the left margin;
- each page may not contain more than 27 lines or less than 25 lines;
- the left margin may not be more than 1 3/4 inches wide;
- the right margin may not be more than 3/8 inches wide;
- each question and answer must begin on a new line;
- an indentation for a new speaker or paragraph may not be more than 10 spaces from the left margin;
- each volume must be indexed as to every witness and exhibit;
- each page must be numbered consecutively;
- the accuracy of the transcript must be certified by the person preparing the transcript.

(f) Statement of Evidence When Proceedings Not Recorded or When Transcript Unavailable. If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be filed with the supreme court clerk by the appellant within 60 days after the notice of appeal is filed.

(g) Agreed Statement as Record on Appeal. In place of the record on appeal as defined in subdivision (a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the supreme court's resolution of the issues. If the statement is truthful, it, -- together with any additions that the district court may consider necessary to a full presentation of the issues on appeal -- must be approved by the district court and must then be certified to the supreme court as the record on appeal. The clerk of

district court must then send the statement to the supreme court within the time provided by Rule 11.

(h) Correction or Modification of Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by the district court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- on stipulation of the parties; or
- by the district court before or after the record has been forwarded.

The supreme court, on proper suggestion or of its own initiative, may direct that an omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record must be presented to the supreme court.

EXPLANATORY NOTE

Rule 10 was amended, effective 1978; March 1, 1986; January 1, 1995; March 1, 1998; March 1, 1999; March 1, 2001; technical amendments effective August 1, 2001; March 1, 2003; March 1, 2004; March 1, 2005; March 1, 2008; March 1, 2011.

Rule 10 was amended, effective January 1, 1995. The amendment allows a transcript to be prepared and certified from an electronic recording by someone other than the operator of recording equipment or a court reporter.

Rule 10 was amended, effective March 1, 2003. The language and organization of the rule were changed to make the rule more easily understandable and to make style and terminology consistent throughout the rules.

Subdivisions (a) and (c) were amended, effective March 1, 2005, to require only two copies of the transcript to be ordered and submitted to the supreme court.

Subdivision (b) was amended, effective March 1, 2004, to eliminate any requirement to obtain a transcript of the voir dire record, unless such a transcript is specifically requested by a party.

Subdivision (b) was amended, effective March 1, 2008, to require that a copy of the transcript be ordered for each self-represented party.

Paragraph (b)(4) was amended, effective March 1, 2011, to increase the time for a clerk to transmit the order for transcript from three to seven days.

Subdivision (c) was amended, effective March 1, 2008, to eliminate references to computer diskettes.

Paragraph (c)(3) was amended, effective March 1, 2011, to increase the time periods regarding transcription costs from 10 to 14 days.

Subdivision (f) was amended, effective March 1, 2011, to increase the time for an appellee to serve objections or propose amendments to a statement of the proceedings from 10 to 14 days.

SOURCES: Joint Procedure Committee Minutes of April 29-30, 2010, page 20; January 25, 2007, page 16; January 30-31, 2003, pages 3-4; September 26-27, 2002, pages 14-15; April 26-27, 2001, pages 8-9; January 27-28, 2000, pages 9-12; September 23-24, 1999, pages 19-21; January 30, 1997, pages 9-10; September 26-27, 1996, page 18; April 28-29, 1994, pages 3-4; January 27-28, 1994, page 18; September 23-24, 1993, pages 20-21; March 28-29, 1985, pages 13-14; November 29, 1984, pages 5-6; May 25-26, 1978, pages 7-8; March 16-17, 1978, pages 1, 2, 9-13; January 12-13, 1978, pages 14-15; October 27-28, 1977, pages 2-3; September 15-16, 1977, pages 5-8, 16-18; June 2-3, 1977, pages 2-4. Fed.R.App.P. 10.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § § 28-18-04, 28-18-05, 28-18-06, 28-18-07, 28-18-08, 28-27-07, 28-27-33, 29-23-01, 29-23-02, 29-23-03, 29-23-04, 29-23-08, 29-23-09.

CROSS REFERENCE: N.D.R.App.P. 3 (Appeal as of Right--How Taken) , N.D.R.App.P. 7 (Bond for Costs on Appeal in Civil Cases) , N.D.R.App.P. 11 (Transmission and Filing of the Record) , and N.D.R.App.P. 12 (Docketing the Appeal).