

2013 SENATE JUDICIARY

SB 2272

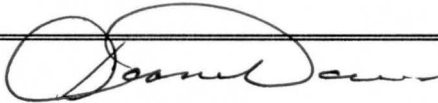
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2272
2/4/2013
Job #18204

☐ Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to district court reporters and bailiffs

Senator David Hogue - Chairman

Senator Nelson - District 21, Fargo - Introduces the bill. She gives a hand -out (1), describing the impetus of the bill.

Senator Sitte - Asks if we take out the language will they not prepare transcripts anymore.

Senator Nelson - She doesn't mind a description of what they do but not to have what the margins need to be or whether to take short hand.

Sally Holewa - State Court Administrator - She says the Supreme Court does support this bill. She relays that all of the items in 2706 are covered by Supreme Court administrative rule or policy already.

Senator Hogue - Asks if court reporters still do shorthand.

Holewa - Replies it is called steno reporting, all by machine.

Senator Sitte - Wonders if Section 5 should be amended. She believes this is important protection for our civil liberties that we let people know they have a right to a transcript.

Holewa - Replies she has no objection to it. It won't hurt anything by doing it.

Senator Armstrong - Asks if this is redundant.

Holewa - Says probably not if it makes it clear to the public.
Opposition - none

Neutral - none

Close the hearing on 2272

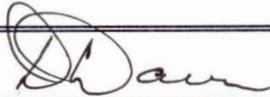
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2272
2/12/2013
Job #18818

☐ Conference Committee

Committee Clerk Signature



Minutes:

vote

Senator David Hogue - Chairman

Committee work

Senator Sitte moves her amendment
Senator Berry seconded

Discussion on the amendment

Senator Sitte explains her amendment and that she feels insures people's civil liberties. She goes on to say that it should say somewhere in code that they have a right to a transcript. Senator Nelson feels this is micro-managing the Supreme Court and is not necessary. Committee discusses where they can find on line Administrative Rules and the Century Code.

Vote - 2 yes, 5 no
Amendment fails

Senator Grabinger moves a do pass
Senator Nelson seconded

Discussion

Senator Armstrong said he would like to site the Code in the repeal. He explains his problem with the way it is titled. He would like to site the admin rule. The committee decides to ask Mr. Walstad, the Code Reviser, if he would do that.

Vote 6 yes, 1 no
Motion passes
Senator Nelson will carry

Date: 2/12/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2272

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Little Amendment

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

Motion Made By S Sitte Seconded By S Berry

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

Total (Yes) 2 No 5

Absent Fail

Floor Assignment Fail

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

Date: 2/12/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2272

Senate 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 S. Grabinger Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson	<input checked="" type="checkbox"/>		Senator Hogue	<input checked="" type="checkbox"/>	
Senator Spencer Berry		<input checked="" type="checkbox"/>			
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 1

Absent _____

Floor Assignment S. Nelson

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

REPORT OF STANDING COMMITTEE

SB 2272: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2272 was placed on the
Eleventh order on the calendar.

2013 HOUSE JUDICIARY

SB 2272

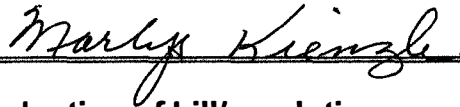
2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2272
March 27, 2013
Job # 20560

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to district court reporters and bailiffs.

Minutes:

Handout #1, testimony #2,

Senator Nelson: District 21 from Fargo Handout #1 Discussed Chapter 27. She informed the committee that numbers 1, 2, and 3 had the wrong policy code number in it. They then discussed that there was language that stated Short hand and Long hand were used in these chapters. It was discussed to get rid of 27-06 but there was fear that there would be no cross reference to the code. The basic reason for this bill is to give the Supreme Court the ability follow their own rules.

Vice Chairman Larry Klemin: made remarks that this process will done mostly by machines.

Sally Holewa, North Dakota State Court Administrator: Testimony #2, see attached. 5:20 to 7:54.

Chairman Koppelman: Closed the hearing

Rep Delmore: Made a motion as Do Pass SB 2272.

Rep Steiner: Seconded the motion.

DO PASS Yes 14 No 0 Absent 0 Carrier Rep Toman

Closed hearing on SB2272

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

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2272

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. Steiner

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. Toman

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

REPORT OF STANDING COMMITTEE

SB 2272: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2272 was placed on the
Fourteenth order on the calendar.

2013 TESTIMONY

SB 2272

If the person preparing the transcript has ceased to hold office as court reporter, the certificate must be made under oath.

27-06-08. Fees for transcripts.

For the preparation of a transcript, a court reporter is entitled to receive compensation at the rate of one dollar ninety cents per page for the original, thirty-five cents per page for the first copy, and fifteen cents per page for each additional copy or at rates which may be set by the supreme court by rule or special order specifically superseding the rates herein provided. A page must consist of not less than twenty-five lines written on paper at least eight and one-half inches by eleven inches [21.59 centimeters by 27.94 centimeters] in size, prepared for binding on the left side, with margins of not more than one and three-fourths inches [44.45 millimeters] on the left nor three-eighths inch [9.53 millimeters] on the right. Type must be standard pica with ten letters to the inch [2.54 centimeters]. Questions and answers must each begin a new line. Indentations for speakers or paragraphs may not be more than ten spaces from the left margin. Pages must be numbered consecutively. Transcripts must be indexed as to witnesses and exhibits. The reporter's compensation must be paid by the party requesting the transcript or by the county or state as ordered by the court when the transcript is ordered prepared by the judge at county or state expense.

27-06-09. Bailiffs of district courts - Appointment - Salary.

Repealed by S.L. 1989, ch. 383, § 2.

February 4, 2013

Sixty-third
Legislative Assembly
of North Dakota

Amendment No:
Title No:

PROPOSED AMENDMENTS TO SENATE BILL NO. 2272

Page 1, line 4, replace "SECTION 1. REPEAL. Chapter 27-06 of the North Dakota Century Code is repealed" with "SECTION 1. AMENDMENT. Chapter 27-06 of the North Dakota Century Code is amended and reenacted as follows:

27-06-04 Filing of ~~shorthand~~ stenographic notes taken by district court reporter.

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. The recording or stenographic notes must be filed in every case at the conclusion of the trial or as soon thereafter as practicable, in the office of the clerk of the district court of the county that the action is pending.

27-06-05 ~~Transcript prepared~~ Filing and Preparation of Transcript by 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, whenever the court reporter is requested to do so by any party thereto and upon payment of the fees as provided by law. The transcript must be typewritten and must be delivered to the party requesting it upon:~~

1. receiving an order from the court or an order for transcript from the clerk of district court and
2. upon payment of fees as provided by court policy or when requested to do so by any party with the approval of the presiding judge and
3. upon payment of fees as provided by court policy.

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 the 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~~

receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08.

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 any of any part thereof, to be made at state expense whenever there is reasonable cause thereof.

#1

CHAPTER 27-06
DISTRICT COURT REPORTERS AND BAILIFFS

27-06-01. District court reporter - Appointment, oath, substitutes, qualifications.
Superseded by Personnel Policy 103R of the Unified Judicial System.

27-06-02. Salary and expenses of court reporter.
Superseded by Personnel Policy 103R of the Unified Judicial System.

27-06-03. Duties of district court reporter.
Superseded by Personnel Policy 103R of the Unified Judicial System.

27-06-04. Filing of shorthand notes taken by district court reporter.

The original shorthand notes taken by a district court reporter, together with an endorsement thereon in longhand over the signature of the reporter giving the title of the action and stating the contents, date, and place of taking, must be filed in every case at the conclusion of the trial, or as soon thereafter as practicable, in the office of the clerk of the district court of the county in which the action is pending. For a reasonable period of time, the reporter's shorthand notes may be withdrawn from the clerk's office by the reporter for the purpose of transcription.

27-06-05. Transcript prepared by 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, whenever the court reporter is requested to do so by any party thereto and upon payment of the fees as provided by law. The transcript must be typewritten and must be delivered to the party requesting it.

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 receive compensation for preparation of the transcript in accordance with the provisions of section 27-06-08.

27-06-07. Certification of transcript.

Each transcript prepared by a district court reporter must be certified by the reporter in the following form:

CERTIFICATE OF COURT REPORTER

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF _____)

I, _____, a duly appointed official court reporter,

CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place indicated.

I FURTHER CERTIFY that the foregoing and attached _____ typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at _____, North Dakota, on _____,

Official Court Reporter

If the person preparing the transcript has ceased to hold office as court reporter, the certificate must be made under oath.

27-06-08. Fees for transcripts.

For the preparation of a transcript, a court reporter is entitled to receive compensation at the rate of one dollar ninety cents per page for the original, thirty-five cents per page for the first copy, and fifteen cents per page for each additional copy or at rates which may be set by the supreme court by rule or special order specifically superseding the rates herein provided. A page must consist of not less than twenty-five lines written on paper at least eight and one-half inches by eleven inches [21.59 centimeters by 27.94 centimeters] in size, prepared for binding on the left side, with margins of not more than one and three-fourths inches [44.45 millimeters] on the left nor three-eighths inch [9.53 millimeters] on the right. Type must be standard pica with ten letters to the inch [2.54 centimeters]. Questions and answers must each begin a new line. Indentations for speakers or paragraphs may not be more than ten spaces from the left margin. Pages must be numbered consecutively. Transcripts must be indexed as to witnesses and exhibits. The reporter's compensation must be paid by the party requesting the transcript or by the county or state as ordered by the court when the transcript is ordered prepared by the judge at county or state expense.

27-06-09. Bailiffs of district courts - Appointment - Salary.

Repealed by S.L. 1989, ch. 383, § 2.

#2

3/27/13

SB 2272
HOUSE JUDICIARY COMMITTEE

Testimony of Sally Holewa
North Dakota State Court Administrator

March 27, 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 to ask that the committee consider giving a Do Pass to SB 2272.

I recently appeared before the Committee on SB 2077, which is a bill that was introduced at the request of the Supreme Court for the purpose of removing the specific dollar amounts contained in NDCC § 27-06-08, the statute on fees that can be charge for transcripts of court proceedings. Since SB 2272 and SB 2077 both cover the same statute and, if enacted, would have contradictory results, I ask that the committee consider them together.

SB 2272 was introduced by members of the Senate Judiciary Committee as an alternative to SB 2077 and 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 fall under the constitutional authority of the Chief Justice as the administrative head of the judicial branch. It might be helpful to note that this chapter was enacted in 1893, at a time when the courts in North Dakota were not unified and the role of the Supreme Court was limited to review of cases on appeal. At that time, the only way to create uniform procedures and practices was to mandate them by statute. When the North Dakota Constitution was amended in 1976, the Chief Justice was given administrative authority over all courts in North Dakota and has the right to adopt policies, procedures and rules that are binding on all courts. All of the sections that would be repealed are currently covered by court rule, court policy, or employee work directives.

Under SB 2272 the sections that would 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 PASS recommendation on SB 2272 and a DO NOT PASS recommendation on SB 2077. 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.

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. 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

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

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

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.

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).