

2017 HOUSE JUDICIARY

HB 1325

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1325
1/25/2017
27380

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the valuation date of property in a divorce.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1325.

Rep. Owens: Introduced the bill. This addresses divorce cases that could take years to adjudicate. In cases of the asset and debt listing without selecting a specific time as it applies in a divorce there are a great number of things that can change within that time. If everyone agreed on the date then if you pick that date no matter what happens in the divorce this is the date that we are doing it on then people can make decisions about their lives and move on.

Representative Klemin: The mutually agreed date on the bill might not be the earliest date. Yet this bill would ignore that date they mutually agreed upon if one of these other dates was earlier. This earlier date seems to have some conflict on the bill.

Rep. Owens: It says the date that is mutually agreed to between the parties or an earlier date as the court deems.

Representative Klemin: On line 9 it says the earlier of those four dates? It may not accomplish the intent. That doesn't seem to be consistent?

Connie Triplett: (#1) (9:00-20:00) Went through the testimony. I see this bill as a no cost alternative and encourage earlier settlement of court cases. In the bill I was trying to say on line 9 if a date mutually agreed upon by the parties involved. If there is a clearer way to say it, please do so. Sub D, line 14 I would suggest we amend and say such other date as the court deems appropriate. This bill just says to the court let's move the date up. If this becomes law the court will have to deal with the reduction in value of property. (22:18) Gave an example. Went into depth on how it would work. (29:40) Discussed this with the Supreme Court and they are aware of it. I would be agreeable to an amendment that finds some other word than manifest injustice.

Chairman K. Koppelman: You talked about item b lines 11 & 12. I am confused how this would work. This there something called a legal separation in ND?

Connie Triplett: Yes there is a legal separation provision and the rules for dividing are exactly the same. ND cases commence by the service of a summons. There is an issue where they do not have to file it right away.

Chairman K. Koppelman: You have indicated two options for the courts. That manifest injustice and then in line d an earlier date as the court deems appropriate.

Connie Triplett: I did mention that. I would request you change d an earlier to such other date.

Representative Nelson: Would this date affect thing in an estate case?

Connie Triplett: I don't think that would be an issue. The court would have to decide. With this it would be more of the table.

Representative Klemin: We have four dates in here. Maybe it could be simplified to either the date they mutually agree upon or such other date as the court deems appropriate. Rather than getting into these two little dates on a and b.

Connie Triplett: I agree there may be a clearer way of saying it. The point of the bill is to move the valuation date up to three to six months after a divorce starts.

Representative Klemin: We talked about attorney's that may delay filing the compliant to the committee. There is a rule of civil procedure that says in that case the other side can make a demand to file a complaint and if they don't file it the case is dead and they have to start over. The estate tax rules require valuations be made as of date of death.

Betsy Elsberry, Attorney: ND does not have a set formula of how assets and debts should be divided. It is on the facts and circumstances of each case. The court needs to determine what is equable. The length of the summon varies by case to case. I am testifying in support of this bill but I have concerned on how it is drafted and I believe most of those concerns have been addressed. (42:20) Discussed divorce process. If the husband has been paying these bills and the wife has been paying all the debts; then he will walk away with a higher bank account and with much lower mortgage balance. This is offset if the valuation date is the date of trail. You asked a question about separation. What happens when parties are living in the same house? Are they technically separated? I like the way the options are outlined to give the public notice. If we have a default and they promote settlement the by date that could greatly affect the valuation. Minnesota has a statue that says they should value the property at the hearing settlement conference unless the parties otherwise agree or unless the court makes specific finding that a different date is equitable or if there is a substantial change in the valuation of an asset or debt from the date of valuation to the date of distribution.

Representative Klemin: You referred to the Minnesota rule. Maybe this is the case where the ND Supreme Court should be making a rule rather than the Legislature trying to figure out a date?

Connie Tripplett: I do believe it is a statute and not a court rule.

Steve Linseth, Owns Software Company in Grand Forks: I like this bill. Gave a couple of examples of how divorce works and how spouses would be entitled to have the property valuation by law. The courts are back logged and people's lives are on hold. (49:50-52:46) I would ask you not look at pre-trial; not look at mutually agreed upon; let's look at the date of separation.

Opposition: None

Neutral: None

Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1325
1/25/2017
27420

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the valuation date of property in a divorce.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1325.

Representative Roers Jones: Were we waiting for a different term rather than manifest injustice?

Representative Jones: They thought that was an extreme thing. It would have to be an uncontrollable thing on their part and it would have to be substantial otherwise it is a waste of time to look at the difference.

Chairman K. Koppelman: We need to tone down the language.

Representative Klemin: I don't think you need to say that introductory phase at all. The judge will take all those things into consideration now when they do set the valuation.

Chairman K. Koppelman: if we were to amend the bill to take out on line 8 the words except in case of manifest injustice and then on line 14 instead of saying earlier just say such other date as the court deems appropriate. Would that deal with the issue?

Representative Klemin: D doesn't fit in here at all. That d should stand alone and c should stand alone too.

Chairman K. Koppelman: Would Rep. Klemin you be willing to work on this and get something that we can look at. We will look at this on Monday.

Closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1325
1/30/2017
27603

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the valuation date of property in a divorce.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1325.

Representative Klemin: (#1) (:37-1:50) Proposed amendment.

Chairman K. Koppelman: Property might be inflated or decreased in value because of the time lapsing. It is fairest to value it at the earliest date possible. Do you think your language deals with this?

Representative Klemin: This clarifies the default date. If the parties agree on a date, why should anyone else decide differently. It is also subject to federal law relating to pensions that overrides everything. It is always up to the court.

Representative Paur: I find it a lot cleaner.

Motion made to move the amendment by Rep. Paur; Seconded by Rep. Nelson

Representative Jones: It seemed almost everyone had real concerns with the date.

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Maragos; Seconded by Rep. Roers Jones

Roll Call Vote: 14 Yes 1 No 0 Absent Carrier: Representative Nelson

Closed.

January 30, 2017

1/30/17 JCB

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1325

Page 1, line 8, remove "Except in case of manifest injustice, the valuation"

Page 1, replace lines 9 through 14 with "Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first."

Renumber accordingly

Date: 1-30-17
 Roll Call Vote :

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1325**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0818.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Paur Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

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

Date: 1-30-17
 Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Maragos Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum		✓			
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 1

Absent 0

Floor Assignment : Rep. Nelson

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

REPORT OF STANDING COMMITTEE

HB 1325: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1325 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "Except in case of manifest injustice, the valuation"

Page 1, replace lines 9 through 14 with "Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first."

Renumber accordingly

2017 SENATE JUDICIARY

HB 1325

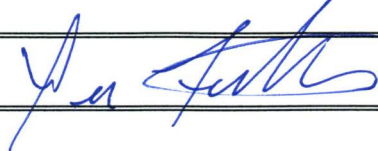
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1325
3/7/2017
29079

- Subcommittee
 Conference Committee

Committee Clerk Signature

Demolition for 

Explanation or reason for introduction of bill/resolution:

Relating to the valuation date of property in a divorce.

Minutes:

Testimony attached # 1,2,3,4

Chairman Armstrong called the committee to order on HB 1325. All committee members were present.

Mark Owens, North Dakota State Representative District 17 (:30 – 4:35), introduced and testified in support of HB 1325.

Divorces can last up to 3-5 years which is a long time. This can skew proper division of assets and debts. During that time people have to make certain decisions on housing, buying a car, etc. If the parties haven't agreed on what day the property and debt listing will be, then this continues on and on and on. So if you've been in divorce proceedings and after two years you go out and buy some assets in something, your spouse would get half your stuff. That's why it's important to pick a date. This is particularly onerous when there is a business in the family because decisions need to be made concerning improvements, investments, etc.

Senator Osland: Is this a solution looking for a problem?

Representative Owens: No. We have situations where I know people who were afraid to make business decisions because they didn't know when the divorce would be over and they didn't want their spouse to have half of those assets. This is a solution filling a gap in the current divorce law.

Connie Triplett, District 18 and Lobbyist representing a client, testified in support of HB 1325. (06:30 - 21:15). (See attachments 1,2,3,4.)

Senator Luick (21:10): How do you perceive the valuation date happening? Do you think there will be a problem with the parties agreeing on the date?

Connie Triplett: No, this rule basically says the first instance is for people to agree. That's why I took this case because in stipulated divorces when people do agree, they frequently are quite happy to agree that the date they separate is the reasonable date to value property.

Senator Luick (24:05) So what we're looking at here is a third date: a separation date, the evaluation date, and the final divorce date?

Connie Triplett: The whole bill is about just making a distinction about when to value assets. Then the judge would use the valuation when deciding what an equitable distribution of the assets is.

There was no further testimony on HB 1325.

Chairman Armstrong closed the hearing on HB 1325.

Senator Luick motioned a **Do Pass**. **Senator Nelson** seconded.

Discussion followed:

Senator Osland asked Chairman Armstrong for his opinion and if he thought the bill was necessary.

Chairman Armstrong responded that he thought it was a good bill. He explained that there were some practical aspects of this, too. He felt it would cut down on some interrogatories and some gamesmanship during the course of the divorce. Entrepreneurs who get divorced have tremendous amount of trouble with property and debt listings and equitable distribution of assets. The valuations can change dramatically over the course of six months.

He pointed out that it's one thing when there are a lot of assets involved but it's another thing when a lot of debt is accumulated.

A **Roll Call Vote** was taken. Yea: 6 Nay: 0 Absent: 0. The motion carried.

The **Carrier** is **Chairman Armstrong**.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1325**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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

REPORT OF STANDING COMMITTEE

HB 1325, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1325 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1325

#1
1325
1-25-17

**Testimony of Connie Triplett
Before the House Judiciary Committee
House Bill 1325
January 25, 2017**

Introduction/representation.

As divorce cases have become more like other civil litigation, it has become more common for such cases to take much longer to work their way through the court system than was the situation even a generation ago. Also, with the increase in economic activity in North Dakota over the past decade, our state district courts have become quite busy. Delays of two or three years can mean that property valuations may change dramatically while a divorce is pending. **(Attach relevant excerpts of Chief Justice Van de Walle's 2017 State of the Judiciary message, discussing dissipation of assets.)**

House Bill 1325 proposes to amend N.D.C.C. § 14-05-24 (regarding division of property and debts in a divorce or legal separation) by specifying the date of the parties' separation, variously defined, as the most appropriate default date for valuing assets, even though the actual division of assets would not be made until the time of the divorce. [Review the four sub-divisions in subsection 1, at lines 10 – 14 of the bill.]

This proposal is consistent with the current rules of court which require parties to a divorce to begin gathering and exchanging information regarding property and debt within 30 days following service of a complaint, together with various subsequent deadlines for reporting to the court, following up on complex issues, and submitting a property and debt listing to the court. **(See Rule 8.3, ND Rules of Court, copy attached, including the range of dates if**

everyone abided by the rule). The clear inference from the deadlines contained in Rule 8.3 is that marital property *should* be valued at or close to the time a divorce is commenced.

However, in actual practice, it is more likely that property will be valued at the time of a divorce trial or settlement. **(Attach list of cases as examples.)** This situation can be a disincentive for people to work hard to increase the value of their businesses while a divorce is pending.

If this bill becomes law, the courts will still have to deal with the reverse situation: that of property valuations decreasing over time through no fault of either party (e.g., declining commodity prices driving down farm land values or general economic malaise affecting stock holdings or the value a business).

The opening phrase "*Except in case of manifest injustice,*" provides discretion to the courts to take declining values into account, while setting the commencement of the case as the default valuation date. There may also be a need to insert an additional exception for federal pension issues, which could be accomplished by amending the bill to add the phrase, "*or as required by federal law,*" immediately following the opening phrase.

While this bill will not solve all the problems facing the courts in separating the assets and debts of a marital partnership, it can be helpful in the following ways:

1. It will encourage (require) attorneys to insist that their clients provide them with property and debt information promptly.
2. It will encourage courts to enforce Rule 8.3 more rigorously, as the valuation process will not have to be completed again at a date closer to the date of trial.

3. Once the property and debt information and valuation is completed, it is more likely that the parties may settle cases, whereas if the valuation of homes, farms, or businesses is left until the last possible moment before a trial, settlement discussions will also be put off until just before trial.
4. Internal consistency between N.D.C.C. Ch. 14-05 (“Divorce”) and 14-07 (“Husband and Wife”). See, esp., 14-07-08 (2):

14-07-08. Separate and mutual rights and liabilities of husband and wife.

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

You can see the issue here: that parties could be informally separated for several years, and if they have more income and assets than are required to provide for their minor children, or if they have no minor children, they could each move on with their separate financial lives, based on the assurances of this section of law. If one of the parties later decides to bring an action for divorce or formal legal separation, all assets are then put on the table, including assets that have been purchased with income earned after the separation. While it is not required as a matter of legal drafting that various chapters of

the North Dakota Century Code be consistent with each other, in this case it would be beneficial to everyone.

Separation of powers. The ND Constitution, at Article XI, Section 26, states: "*The legislative, executive, and judicial branches are coequal branches of government. . .*" Article VI, Section 3, provides that: "*The Supreme Court shall have authority to promulgate rules of procedure . . . to be followed by all the courts of the state.*" Because the judiciary is a separate and equal branch of government, and because it has the constitutional authority to make its own rules of procedure, it's important to keep a statute involving the judicial branch clearly at the policy level and allow the judicial branch to work out the details.

that the trial court abused its discretion. *Bagan v. Bagan*, 382 N.W.2d 645 (N.D. 1986).

Exceptional Circumstances.

An exceptional circumstance for an ex parte order, without notice or hearing, is the need to protect a child in a custody dispute. *Whitmire v. Whitmire*, 1997 ND 214, 570 N.W.2d 231 (1997), rev'd in part on other grounds, 1999 ND 56, 591 N.W.2d 126 (1999).

Findings Sufficient.

Mother served counsel with her motion by mail, alleging exceptional circumstances, and the trial court said the documents indicated there might have been abuse of the children, for purposes of N.D.R.Ct. 8.2(a)(2), and the trial court found it necessary to issue an order that restricted the father's parenting time, and the findings were sufficient to understand the basis for the trial court's order. *Jensen v. Deaver*, 2013 ND 47, 828 N.W.2d 533, 2013 N.D. LEXIS 57 (Apr. 4, 2013).

Modification Proceedings.

Attorney fees can be awarded in the discretion of the trial court, under this section, to a party in modification proceedings. *Pitsenbarger v. Pitsenbarger*, 382 N.W.2d 662 (N.D. 1986).

If a prima facie case is not established as a preliminary matter under N.D.C.C. § 14-09-06.6(4), a hearing on an interim order pending a proceeding for the motion to change custody is not necessary. Therefore, on remand, a district court was permitted to consider whether an evidentiary hearing under N.D.R.Ct. 8.2(d) should have been ordered where a father was seeking an interim custody order. *Dietz v. Dietz*, 2007 ND 84, 733 N.W.2d 225 (2007).

In a custody modification proceeding, the court erred under N.D.R.Ct. 8.2(a)(5) in failing to provide notice of the hearing requirement to the mother and in failing to consider the fa-

ther's failure to secure a hearing within 30 days of the issuance of an ex parte order. *Rudman v. Rode*, 2012 ND 167, 820 N.W.2d 371, 2012 N.D. LEXIS 170 (Aug. 16, 2012).

Nondischargeability of Attorney's Fees in Bankruptcy.

If an award of attorney's fees is actually of the nature of maintenance or support, the obligation is not discharged in bankruptcy. *In re Barth*, 37 B.R. 357 (Bankr. D.N.D. 1984).

Payments to Clerk.

If an obligor has a long and unblemished payment history, the court has power under subsection (e) to otherwise order the clerk to accept payment by personal check, rather than a guaranteed instrument, unless and until the obligor's personal check is returned unpaid. *Hallock v. Mickels*, 507 N.W.2d 541 (N.D. 1994).

To Whom Payable.

Suit money allowed in a divorce action should be payable to the applicant and not to the attorney. *Bailey v. Bailey*, 22 N.D. 553, 134 N.W. 747 (1912).

Collateral References.

Notice: necessity and sufficiency of notice and hearing as to allowance of suit money or counsel fees in divorce or other marital actions. 10 A.L.R.3d 280.

Adverse judgment: wife's right to award of counsel fees in final divorce judgment of trial or appellate court as affected by the fact that judgment was rendered against her. 32 A.L.R.3d 1227.

Court's authority to award temporary alimony or suit money in action for divorce, separate maintenance, or alimony where existence of valid marriage is contested, 34 A.L.R.4th 814.

Excessiveness or adequacy of attorneys' fees in domestic relations cases, 17 A.L.R.5th 366.

Rule 8.3. Case management (Divorce cases).

(a) **Compulsory meeting.** Within 30 days after service of the complaint, the parties and their attorneys must meet in person or by electronic means to prepare a joint informational statement (in the form shown in appendix C) and a preliminary property and debt listing. The complaint and joint informational statement must be filed no later than seven days after the compulsory meeting. The parties must exchange information and documentary evidence relating to the existence and valuation of assets and liabilities. At a minimum, the parties must be prepared to exchange current paystubs, employment and income information, tax returns, preliminary pension information, and asset, debt and expense documentation. The parties must determine at the meeting what additional information is necessary in order to complete the case. The parties must decide at the meeting whether alternative dispute resolution methods are appropriate.

(b) **Scheduling order.** Within 30 days after the informational statement is filed, the court must issue its scheduling order. The court may issue the order after either a telephone or in-court scheduling conference, or without a conference or hearing if none is needed. The scheduling order may establish any of the following deadlines:

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- (1) specific dates for the completion of discovery and other pretrial preparations;
 - (2) specific dates for serving, filing, or hearing motions;
 - (3) specific dates for completion of mediation/alternative dispute resolution;
 - (4) a specific date for the parties to complete parent/divorce education;
 - (5) a specific date for filing the property and debt listing;
 - (6) specific dates for completion of parenting evaluation;
 - (7) a specific date by which the parties will be prepared for the pretrial conference;
 - (8) a specific date by which the parties will be prepared for the trial;
 - (9) a specific date for identification of witnesses and documents; and
 - (10) a specific date by which the parties will submit the parenting plans.
- (c) **Pretrial conferences.**

(1) Each party must complete a pretrial conference statement substantially in the form set forth in appendix D which must be served upon all parties and filed with the court at least 14 days prior to the date of the pretrial conference.

(2) Unless excused by the court for good cause, the parties and attorneys who will try the proceedings must attend the pretrial conference, prepared to discuss settlement. If a stipulation is reduced to writing prior to the pretrial conference, the case may be heard as a default at the time scheduled for the conference. In that event, only one party need appear. If a party fails to appear at a pretrial conference, the court may dispose of the proceedings without further notice to that party.

(3) If the parties are unable to resolve the case, in whole or in part, at the pretrial conference, the court must issue an order concerning any remaining discovery and motions, and identifying the contested issues for trial.

(4) Unless otherwise ordered, at least 14 days before trial, the parties must file a joint property and debt substantially in the form set forth in appendix E. Each asset or liability must be numbered separately.

EXPLANATORY NOTE

Rule 8.3 was amended, effective March 1, 1986; August 1, 1996; March 1, 2008; August 1, 2009; March 1, 2011.

Subdivision (a) was amended, effective March 1, 2011, to increase the time to file the complaint and joint informational statement from five to seven days after the compulsory meeting.

Paragraph (b)(8) was amended, March 1, 2008, to delete a reference to the note of issue and certificate of readiness.

Paragraph (c)(1) was amended, effective March 1, 2011, to change the time to serve a pretrial conference statement from 10 to 14 days before the date of the pretrial conference.

Paragraph (c)(4) was amended, effective March 1, 2011, to change the time to file a joint property and debt listing from 10 to 14 days before trial.

Sources: Joint Procedure Committee Minutes of April 29-30, 2010, page 21; May 21-22, 2009, pages 44-45; April 26-27, 2007, pages 14-15; January 25-26, 1996, pages 3-6; September 28-29, 1995, pages 3-11; June 22, 1984, page 10.

In General.

This rule requires parties in a contested divorce to jointly prepare a complete listing of their property and debts. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Although the parties did not comply with R.D.R.Ct. 8.3 within 30 days, both parties did file an informational statement and property and debt listing as the rule required and the court found the parties complied with the rule; the wife did not state what relief she

was requesting for any prejudice she may have suffered as a result of the husband's delayed compliance. *Eberle v. Eberle*, 2009 ND 107, 766 N.W.2d 477, 2009 N.D. LEXIS 103 (June 17, 2009).

Condition Precedent to Hearing.

A trial court may properly require compliance with this rule as a condition precedent to a contested divorce hearing. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Default Divorce.

This rule does not extend to a default divorce. *Rustand v. Rustand*, 379 N.W.2d 806 (N.D. 1986) (suggesting that a listing, similar to an 8.3 listing, should be prepared for each default divorce).

Property Distribution.

District court's property distribution was equitable because the parties' assets and debts were distributed as they requested, the district court considered and made findings about each required factor and explained its unequal distribution, a cash payment to the husband was due to the parties' ages, the difference in the future earning abilities and the disruption of the husband's career, and the wife failed to establish there was a debt to the Hopi Tribe or the amount of the debt. *Gabaldon-Cochran v. Cochran*, 2015 ND 214, 868 N.W.2d 501, 2015 N.D. LEXIS 221 (Aug. 25, 2015).

Purpose.

The purpose in requiring an agreed upon statement of assets and liabilities is so that the divorce court, in arriving at a division of the disputed property in a manner consistent with the responsibilities enunciated in N.D.C.C. § 14-05-24, will have knowledge of what the marital estate consists of without the necessity of testimony or appraisers. *McConnell v. McConnell*, 88 Bankr. 218 (Bankr. D.N.D. 1988).

The purpose of this rule is to assist the trial court in its division of marital property by having the parties provide the court with a list of mutually agreed-to values or, if no agreement is reached, separately stated values. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Because a district court was not bound by the values submitted by parties in a divorce action

in a N.D.R.Ct. 8.3(c)(4) property and debt listing, the district court's exclusion of breast implants from the marital estate was not clearly erroneous where no evidence was presented and no argument was advanced warranting their inclusion as marital assets. *Isaacson v. Isaacson*, 2010 ND 18, 777 N.W.2d 886, 2010 N.D. LEXIS 19 (2010).

Sanctions.

Although no explicit sanction for noncompliance is specified by this rule, at the very least, if, at the time of trial, this rule has not been complied with, the trial court should declare a recess until the parties have prepared the joint listing. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Valuation.

In a divorce case where a former husband valued a home at \$150,000 and a former wife valued the home at \$300,000 on a preliminary property and debt listing, and the husband testified that the home needed substantial repairs, the district court's valuation of \$165,000 was within the range of the evidence presented. Therefore, the district court's valuation of the marital estate was not clearly erroneous. *Mertz v. Mertz*, 2015 ND 13, 858 N.W.2d 292, 2015 N.D. LEXIS 4 (Jan. 15, 2015).

Collateral References.

Spouse's right to discovery of closely held corporation records during divorce proceeding, 38 A.L.R.4th 145.

Divorce and separation: method of valuation of life insurance policies in connection with trial court's division of property, 54 A.L.R.4th 1203.

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 under the seal of the court, 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 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: If either spouse violates any of these provisions, that spouse may be in contempt of court.

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On Jan. 4, 2017, North Dakota Chief Justice Gerald VandeWalle presented the State of the Judiciary Address to the 65th Legislative Assembly. Here is the text of his remarks.

Members of the 65th Legislative Assembly, I am pleased to present the State of the Judiciary to you. Although not delivered in its traditional format, that is more to my advantage than yours as I realize that the written page provides me greater

opportunity to expound on my thoughts than does the traditional speech. Nevertheless, I hope that in the future you will, as you have in the past, extend the courtesy of an invitation to the chief justice to appear before you to deliver the message of the Judicial Branch of Government.

I.

The judiciary's role is indispensable and is indisputably a function of government. The structure of principles and rules determining how the sovereign power of a state is exercised, is referred to as "government." Like law enforcement, fire protection and the military, our system of government provides a judicial system with the integrity, independence and credibility to resolve disagreements and disputes. An independent judiciary protects every individual, every business, and every association, regardless of the power or volume of its voice or where that voice falls in the political arena.

Everybody is affected, directly or indirectly, by court decisions. Court decisions provide certainty under the law. Courts settle personal disputes, business disputes, and criminal charges. Courts interpret administrative rules, statutory questions, and constitutional issues. The issues encompassed in the thousands of individual cases filed each year include parenting time and residential responsibility, distribution of property after death, degree of fault and compensation for personal injury and property damage, land disputes, health care disputes, review of administrative agency decisions, and issues of crime and punishment.

Courts are part of the social services process. Courts are the institution that determine issues of juvenile delinquency and punishment. They are involved in child dependency and neglect cases from initial removal of a child from the home until a safe permanent placement for the child can be found.

Courts are involved in mental health commitments from the initial hold until the person is either found competent or placed under a treatment order. Courts are involved in adult guardianship and conservatorship cases from the initial request to determine competency and for years afterward as they monitor the delivery of services by the guardian or conservator. Courts are the last option for persons who contest administrative agency decisions affecting public assistance, workers compensation, unemployment compensation, and driver's license restrictions. Real people suffer genuine hardship when court hearings are delayed.

The court system now files 33,000 more cases per year than it did in 2009. These additional cases are not only coming from oil-impact areas but reflect increases from across the state. Since 2009 you have added 9 new judgeships chambered in the east, central, and western parts of the state. The legislature created these judgeships to address the increasing caseload and to give judges more time to devote individual attention to each case. I thank you for your foresight and understanding.

While we are not requesting more judges at this time, our most recent weighted caseload study shows that even with these additions we are still 10 judges short in the state.

Since 2009, we have added 21 clerk of court staff to address the growing caseload. This number includes 11 clerk of court employees who were already providing their services to us as county clerks and became state employees when their county elected to transfer their employment under N.D.C.C. ch. 27-05.2. Again, while we are not at this time requesting additional positions, despite the additional employees, our latest weighted workload assessment continues to show a statewide shortage of 21 clerks.

We have also added programs to directly address the needs of individuals - not the court system, not lawyers - but the needs of the actual people involved in court cases. These programs include adult and juvenile drug courts, family law mediation, guardianship monitoring, and a legal self-help center. To address the desperate shortage of attorneys in rural North Dakota which increases the costs to rural litigants and hampers the cities, school boards and other entities that regularly rely on legal advice, we worked with the UND Law School to create a rural law-clerk internship program.

Nor have we been standing still in the technology area. Since 2009 we have instituted electronic filing, electronic documents, electronic traffic citations, online credit card payments, online juror qualification and the online ability to request a deferred reporting date; email and text messaging services that send status updates regarding jury service; a public search website that allows searches for hearing dates, criminal and civil case dispositions, and judgment searches; electronic search warrants; and automated data exchanges with other state entities including CJIS (Criminal Justice Information System), SAVIN (Statewide Automated Victim Notification System), the Department of Health, the Secretary of State, and the Department of Transportation.

II.

The additional staff and new programs were necessary to keep the judicial system current and responsive to today's society. If staff must be reduced and programs eliminated North Dakotans should be aware of the results of those actions.

Delay in the court system results in dissipating assets. Real estate, money, investments, and lost opportunity are implicated not just in business-to-business disputes, but also in divorces, probate cases, mineral rights cases, and land disputes.

Delay in the court system affects the stability of families. Divorce and paternity cases often involve issues of custody, visitation, school district assignment, out-of-state relocation of children, and child support payments. Adoption, guardianship, and termination of parental rights are additional cases where delay in the court system keeps families in an agonizing state of uncertainty.

While I recognize that reductions must be made, the delivery of services and the quality of justice will suffer because of the cuts. We are already feeling those effects. Deficiency Appropriation: For the first time in its history, the judicial branch is requesting a deficiency appropriation. This is to cover the costs of the high number of contested cases in the South Central Judicial District related to the Dakota Access Pipeline controversy. While I understand the desire as well as the necessity to keep "government" lean, it places all of us in the position of playing "catch up," often with negative effects on the litigants as I have already noted above.

To meet the reduction to our 2015-2017 appropriation and to maintain that amount for the 2017-2019 biennium we have been holding open an average of 20 positions per month. We have cut three referee positions in the Northeast and Northeast Central Judicial Districts and implemented a reduction-in-force plan that will eliminate 56 other positions. This is a combination of regular full-time employees, full-time and part-time temporary employees, and

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Rep. Lawrence R. Klemin

January 30, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1325

Page 1, line 8, replace "Except in case of manifest injustice, the valuation" with "Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, then the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first."

Page 1, remove lines 9 through 14

Renumber accordingly

**Testimony of Connie Triplett
Before the Senate Judiciary Committee
House Bill 1325
March 13, 2017**

Introduction/representation.

As divorce cases have become more like other civil litigation, it has become more common for such cases to take much longer to work their way through the court system than was the situation even a generation ago. Also, with the increase in economic activity in North Dakota over the past decade, our state district courts have become quite busy. Delays of two or three years can mean that property valuations may change dramatically while a divorce is pending. **Attached are some relevant excerpts from Chief Justice Van de Walle's 2017 State of the Judiciary message.** By quoting Justice Van de Walle's words, I am not suggesting that he or the ND Supreme Court is supporting this bill. I only suggest that he is a highly credible source of information regarding the resources of the judiciary in this State.

House Bill 1325 proposes to amend N.D.C.C. § 14-05-24 (regarding division of property and debts in a divorce or legal separation) by specifying the date of the parties' separation, or the date of service of the summons, as the most appropriate default date for valuing assets, even though the actual division of assets would not be made until the time of the divorce. **Attached is the marked-up version of the bill, so you can see how it was originally introduced and the way in which the House Judiciary Committee changed it.**

The opening phrase of the bill as drafted "*Except in case of manifest injustice,*" was intended to provide discretion to the courts to take declining values into account, while setting the

commencement of the case as the default valuation date. However, in vetting the bill with other attorneys and with a retired district court judge, there was a consensus that manifest injustice might be too high of a bar, so we invited the members of the House Judiciary Committee to come up with a different word formula. As you can see, they have substituted the phrase “just and equitable” for the original “manifest injustice.” They also inserted an acknowledgment that federal law may require the use of the date of divorce for valuing some types of pensions (“Except as may be required by federal law for specific property . . .”).

The members of the House Judiciary Committee also simplified the language regarding choice of dates. We had four separate sub-divisions with no particular priority between them. The way it appears before you now, the agreement of the parties is put into the first sentence, which I read as an implied statement that the legislature and the courts will always prefer that a divorcing couple make as many decisions between themselves as possible. If the parties cannot agree on a date for valuation of the marital property, the default date would be the earlier of the date of service of the summons or the date on which the parties last separated.

This proposal is consistent with the current rules of court which require parties to a divorce to begin gathering and exchanging information regarding property and debt within 30 days following service of a complaint, together with various subsequent deadlines for reporting to the court, following up on complex issues, and submitting a property and debt listing to the court. **(See Rule 8.3, ND Rules of Court, copy attached, including the range of dates if everyone abided by the rule).** The clear inference from the deadlines contained in Rule 8.3 is that marital property *should* be valued at or close to the time a divorce is commenced.

However, in actual practice, it is more likely that property will be valued at the time of a divorce trial or settlement. This situation can be a disincentive for people to work hard to increase the value of their businesses while a divorce is pending.

If this bill becomes law, the courts will still have to deal with the reverse situation: that of property valuations decreasing over time through no fault of either party (e.g., declining commodity prices driving down farm land values or general economic malaise affecting stock holdings or the value a business).

While this bill will not solve all the problems facing the courts in separating the assets and debts of a marital partnership, it can be helpful in the following ways:

1. It will encourage (require) attorneys to insist that their clients provide them with property and debt information promptly.
2. It will encourage courts to enforce Rule 8.3 more rigorously, as the valuation process will not have to be completed again at a date closer to the date of trial.
3. Once the property and debt information and valuation is completed, it is more likely that the parties may settle cases, whereas if the valuation of homes, farms, or businesses is left until the last possible moment before a trial, settlement discussions will also be put off until just before trial.
4. Internal consistency between N.D.C.C. Ch. 14-05 (“Divorce”) and 14-07 (“Husband and Wife”). See, esp., 14-07-08 (2):

14-07-08. Separate and mutual rights and liabilities of husband and wife.

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

You can see the issue here: that parties could be informally separated for several years, and if they have more income and assets than are required to provide for their minor children, or if they have no minor children, they could each move on with their separate financial lives, based on the assurances of this section of law. If one of the parties later decides to bring an action for divorce or formal legal separation, all assets are then put on the table, including assets that have been purchased with income earned after the separation. While it is not required as a matter of legal drafting that various chapters of the North Dakota Century Code be consistent with each other, in this case it would be beneficial to everyone.

Separation of powers. The ND Constitution, at Article XI, Section 26, states: “*The legislative, executive, and judicial branches are coequal branches of government. . .*” Article VI, Section 3, provides that: “*The Supreme Court shall have authority to promulgate rules of procedure . . . to be followed by all the courts of the state.*” Because the judiciary is a separate and equal branch of government, and because it has the constitutional authority to make its own rules of procedure, it’s important to keep a statute involving the judicial branch clearly at the policy level

and allow the judicial branch to work out the details. Because of that, I would encourage you to keep this bill as simple as possible and not to get into the weeds.

HB 1325 passed overwhelmingly in the House, as amended by House Judiciary, with a vote of 86 – 4, with 4 absent and not voting. We hope that this committee and the full Senate will give it a similar favorable review.

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HB 1325



2017 State of the Judiciary address

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Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1325

Introduced by

Representative Owens

Senator Myrdal

1 A BILL for an Act to amend and reenact section 14-05-24 of the North Dakota Century Code,
2 relating to the valuation date of property in a divorce.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 14-05-24 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **14-05-24. Division of property and debts.**

7 1. When a divorce is granted, the court shall make an equitable distribution of the
8 property and debts of the parties. ~~Except in case of manifest injustice, the valuation~~
9 ~~date of marital property is the first day of the month following the earlier of:~~
10 ~~a. The date of service of a summons in an action for divorce or separation;~~
11 ~~b. The actual date on which the parties last separated before the commencement of~~
12 ~~an action for divorce or separation;~~
13 ~~c. A date mutually agreed upon between the parties; or~~
14 ~~d. An earlier date as the court deems appropriate.~~ Except as may be required by
15 federal law for specific property, and subject to the power of the court to
16 determine a date that is just and equitable, the valuation date for marital property
17 is the date mutually agreed upon between the parties. If the parties do not
18 mutually agree upon a valuation date, the valuation date for marital property is
19 the date of service of a summons in an action for divorce or separation or the
20 date on which the parties last separated, whichever occurs first.

21 2. If one party to the divorce is covered by the civil service retirement system or other
22 government pension system in lieu of social security and is not entitled to receive full
23 social security benefits and the other party is a social security recipient, in making an
24 equitable distribution award, the court shall compute what the present value of the

1 social security benefits would have been to the party with the government pension
2 during the covered period and subtract that amount from the value of the government
3 pension in order to determine the government pension's marital portion.

4 3. The court may redistribute property and debts in a postjudgment proceeding if a party
5 has failed to disclose property and debts as required by rules adopted by the supreme
6 court or the party fails to comply with the terms of a court order distributing property
7 and debts.

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Rule 8.3

NORTH DAKOTA RULES OF COURT

that the trial court abused its discretion. Bagan v. Bagan, 382 N.W.2d 645 (N.D. 1986).

Exceptional Circumstances.

An exceptional circumstance for an ex parte order, without notice or hearing, is the need to protect a child in a custody dispute. Whitmire v. Whitmire, 1997 ND 214, 570 N.W.2d 231 (1997), rev'd in part on other grounds, 1999 ND 56, 591 N.W.2d 126 (1999).

Findings Sufficient.

Mother served counsel with her motion by mail, alleging exceptional circumstances, and the trial court said the documents indicated there might have been abuse of the children, for purposes of N.D.R.Ct. 8.2(a)(2), and the trial court found it necessary to issue an order that restricted the father's parenting time, and the findings were sufficient to understand the basis for the trial court's order. Jensen v. Deaver, 2013 ND 47, 828 N.W.2d 533, 2013 N.D. LEXIS 57 (Apr. 4, 2013).

Modification Proceedings.

Attorney fees can be awarded in the discretion of the trial court, under this section, to a party in modification proceedings. Pitsenbarger v. Pitsenbarger, 382 N.W.2d 662 (N.D. 1986).

If a prima facie case is not established as a preliminary matter under N.D.C.C. § 14-09-06.6(4), a hearing on an interim order pending a proceeding for the motion to change custody is not necessary. Therefore, on remand, a district court was permitted to consider whether an evidentiary hearing under N.D.R.Ct. 8.2(d) should have been ordered where a father was seeking an interim custody order. Dietz v. Dietz, 2007 ND 84, 733 N.W.2d 225 (2007).

In a custody modification proceeding, the court erred under N.D.R.Ct. 8.2(a)(5) in failing to provide notice of the hearing requirement to the mother and in failing to consider the fa-

ther's failure to secure a hearing within 30 days of the issuance of an ex parte order. Rude v. Rode, 2012 ND 167, 820 N.W.2d 371, 2012 N.D. LEXIS 170 (Aug. 16, 2012).

Nondischargeability of Attorney's Fees in Bankruptcy.

If an award of attorney's fees is actually of the nature of maintenance or support, the obligation is not discharged in bankruptcy. In re Barth, 37 B.R. 357 (Bankr. D.N.D. 1994).

Payments to Clerk.

If an obligor has a long and unblemished payment history, the court has power under subsection (e) to otherwise order the clerk to accept payment by personal check, rather than a guaranteed instrument, unless and until the obligor's personal check is returned unpaid. Hallock v. Mickels, 507 N.W.2d 541 (N.D. 1994).

To Whom Payable.

Suit money allowed in a divorce action should be payable to the applicant and not to the attorney. Bailey v. Bailey, 22 N.D. 553, 134 N.W. 747 (1912).

Collateral References.

Notice: necessity and sufficiency of notice and hearing as to allowance of suit money or counsel fees in divorce or other marital action. 10 A.L.R.3d 280.

Adverse judgment: wife's right to award of counsel fees in final divorce judgment of trial or appellate court as affected by the fact that judgment was rendered against her. 32 A.L.R.3d 1227.

Court's authority to award temporary alimony or suit money in action for divorce, separate maintenance, or alimony where existence of valid marriage is contested, 34 A.L.R.3d 814.

Excessiveness or adequacy of attorneys fees in domestic relations cases, 17 A.L.R.5th 362.

Rule 8.3. Case management (Divorce cases).

(a) **Compulsory meeting.** Within 30 days after service of the complaint, the parties and their attorneys must meet in person or by electronic means to prepare a joint informational statement (in the form shown in appendix C) and a preliminary property and debt listing. The complaint and joint informational statement must be filed no later than seven days after the compulsory meeting. The parties must exchange information and documentary evidence relating to the existence and valuation of assets and liabilities. At a minimum, the parties must be prepared to exchange current paystubs, employment and income information, tax returns, preliminary pension information, and asset, debt and expense documentation. The parties must determine at the meeting what additional information is necessary in order to complete the case. The parties must decide at the meeting whether alternative dispute resolution methods are appropriate.

(b) **Scheduling order.** Within 30 days after the informational statement is filed, the court must issue its scheduling order. The court may issue the order after either a telephone or in-court scheduling conference, or without a conference or hearing if none is needed. The scheduling order may establish any of the following deadlines:

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- (1) specific dates for the completion of discovery and other pretrial preparations;
- (2) specific dates for serving, filing, or hearing motions;
- (3) specific dates for completion of mediation/alternative dispute resolution;
- (4) a specific date for the parties to complete parent/divorce education;
- (5) a specific date for filing the property and debt listing;
- (6) specific dates for completion of parenting evaluation;
- (7) a specific date by which the parties will be prepared for the pretrial conference;
- (8) a specific date by which the parties will be prepared for the trial;
- (9) a specific date for identification of witnesses and documents; and
- (10) a specific date by which the parties will submit the parenting plans.

(c) Pretrial conferences.

(1) Each party must complete a pretrial conference statement substantially in the form set forth in appendix D which must be served upon all parties and filed with the court at least 14 days prior to the date of the pretrial conference.

(2) Unless excused by the court for good cause, the parties and attorneys who will try the proceedings must attend the pretrial conference, prepared to discuss settlement. If a stipulation is reduced to writing prior to the pretrial conference, the case may be heard as a default at the time scheduled for the conference. In that event, only one party need appear. If a party fails to appear at a pretrial conference, the court may dispose of the proceedings without further notice to that party.

(3) If the parties are unable to resolve the case, in whole or in part, at the pretrial conference, the court must issue an order concerning any remaining discovery and motions, and identifying the contested issues for trial.

(4) Unless otherwise ordered, at least 14 days before trial, the parties must file a joint property and debt substantially in the form set forth in appendix E. Each asset or liability must be numbered separately.

EXPLANATORY NOTE

Rule 8.3 was amended, effective March 1, 1986; August 1, 1996; March 1, 2008; August 1, 2009; March 1, 2011.

Subdivision (a) was amended, effective March 1, 2011, to increase the time to file the complaint and joint informational statement from five to seven days after the compulsory meeting.

Paragraph (b)(8) was amended, March 1, 2008, to delete a reference to the note of issue and certificate of readiness.

Paragraph (c)(1) was amended, effective March 1, 2011, to change the time to serve a pretrial conference statement from 10 to 14 days before the date of the pretrial conference.

Paragraph (c)(4) was amended, effective March 1, 2011, to change the time to file a joint property and debt listing from 10 to 14 days before trial.

Sources: Joint Procedure Committee Minutes of April 29-30, 2010, page 21; May 21-22, 2009, pages 44-45; April 26-27, 2007, pages 14-15; January 25-26, 1996, pages 3-6; September 28-29, 1985, pages 3-11; June 22, 1984, page 10.

General.

This rule requires parties in a contested divorce to jointly prepare a complete listing of their property and debts. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Although the parties did not comply with R.Ct. 8.3 within 30 days, both parties did file an informational statement and property and debt listing as the rule required and the court found the parties complied with the rule; the wife did not state what relief she

was requesting for any prejudice she may have suffered as a result of the husband's delayed compliance. *Eberle v. Eberle*, 2009 ND 107, 766 N.W.2d 477, 2009 N.D. LEXIS 103 (June 17, 2009).

Condition Precedent to Hearing.

A trial court may properly require compliance with this rule as a condition precedent to a contested divorce hearing. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Default Divorce.

This rule does not extend to a default divorce. *Rustand v. Rustand*, 379 N.W.2d 806 (N.D. 1986) (suggesting that a listing, similar to an 8.3 listing, should be prepared for each default divorce).

Property Distribution.

District court's property distribution was equitable because the parties' assets and debts were distributed as they requested, the district court considered and made findings about each required factor and explained its unequal distribution, a cash payment to the husband was due to the parties' ages, the difference in the future earning abilities and the disruption of the husband's career, and the wife failed to establish there was a debt to the Hopi Tribe or the amount of the debt. *Gabaldon-Cochran v. Cochran*, 2015 ND 214, 868 N.W.2d 501, 2015 N.D. LEXIS 221 (Aug. 25, 2015).

Purpose.

The purpose in requiring an agreed upon statement of assets and liabilities is so that the divorce court, in arriving at a division of the disputed property in a manner consistent with the responsibilities enunciated in N.D.C.C. § 14-05-24, will have knowledge of what the marital estate consists of without the necessity of testimony or appraisers. *McCormell v. McCormell*, 88 Bankr. 218 (Bankr. D.N.D. 1988).

The purpose of this rule is to assist the trial court in its division of marital property by having the parties provide the court with a list of mutually agreed-to values or, if no agreement is reached, separately stated values. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Because a district court was not bound by the values submitted by parties in a divorce action

in a N.D.R.Ct. 8.3(c)(4) property and debt listing, the district court's exclusion of breast implants from the marital estate was not clearly erroneous where no evidence was presented and no argument was advanced warranting their inclusion as marital assets. *Isaacson v. Isaacson*, 2010 ND 18, 777 N.W.2d 886, 2010 N.D. LEXIS 19 (2010).

Sanctions.

Although no explicit sanction for noncompliance is specified by this rule, at the very least, if, at the time of trial, this rule has not been complied with, the trial court should declare a recess until the parties have prepared the joint listing. *Heggen v. Heggen*, 452 N.W.2d 96 (N.D. 1990).

Valuation.

In a divorce case where a former husband valued a home at \$150,000 and a former wife valued the home at \$300,000 on a preliminary property and debt listing, and the husband testified that the home needed substantial repairs, the district court's valuation of \$165,000 was within the range of the evidence presented. Therefore, the district court's valuation of the marital estate was not clearly erroneous. *Mertz v. Mertz*, 2015 ND 13, 858 N.W.2d 292, 2015 N.D. LEXIS 4 (Jan. 15, 2015).

Collateral References.

Spouse's right to discovery of closely held corporation records during divorce proceeding, 38 A.L.R.4th 145.

Divorce and separation: method of valuation of life insurance policies in connection with trial court's division of property, 54 A.L.R.4th 1203.

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 under the seal of the court, 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 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: If either spouse violates any of these provisions, that spouse may be in contempt of court.

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