

## **CHAPTER 28-27 APPEALS TO SUPREME COURT**

### **28-27-01. Appeals to supreme court.**

A judgment or order in a civil action or in a special proceeding in any of the district courts may be removed to the supreme court by appeal as provided in this chapter.

### **28-27-02. What orders reviewable.**

The following orders when made by the court may be carried to the supreme court:

1. An order affecting a substantial right made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
2. A final order affecting a substantial right made in special proceedings or upon a summary application in an action after judgment;
3. An order which grants, refuses, continues, or modifies a provisional remedy, or grants, refuses, modifies, or dissolves an injunction or refuses to modify or dissolve an injunction, whether such injunction was issued in an action or special proceeding or pursuant to the provisions of section 35-22-04, or which sets aside or dismisses a writ of attachment for irregularity;
4. An order which grants or refuses a new trial or which sustains a demurrer;
5. An order which involves the merits of an action or some part thereof;
6. An order for judgment on application therefor on account of the frivolousness of a demurrer, answer, or reply; or
7. An order made by the district court or judge thereof without notice is not appealable, but an order made by the district court after a hearing is had upon notice which vacates or refuses to set aside an order previously made without notice may be appealed to the supreme court when by the provisions of this chapter an appeal might have been taken from such order so made without notice, had the same been made upon notice.

### **28-27-02.1. Order shall describe papers on which made.**

Superseded by N.D.R.App.P., Rule 49.

### **28-27-03. Appellant and respondent defined - Title to action on appeal unchanged.**

Superseded by N.D.R.App.P., Rule 1.

### **28-27-04. Time for appeal.**

Superseded by N.D.R.App.P., Rule 4.

### **28-27-05. How appeal taken.**

Superseded by N.D.R.App.P., Rules 3, 25.

### **28-27-06. Clerk to transmit papers.**

Superseded by N.D.R.App.P., Rule 11.

### **28-27-07. Record on appeal.**

Superseded by N.D.R.App.P., Rule 10.

### **28-27-08. Additional time to prepare record.**

Superseded by N.D.R.App.P., Rule 11.

### **28-27-09. Appeal ineffectual without undertaking.**

Superseded by N.D.R.App.P., Rule 7.

**28-27-09.1. From whom undertaking not required unless ordered by court.**

When the state, or any state officer, or state board, in a purely official capacity, or any public corporation, or any municipal corporation within the state, takes an appeal, service of the notice of appeal perfects the appeal and stays the execution or performance of the judgment or order appealed from and no undertaking need be given, but the supreme court on motion may require sureties to be given in such form and manner as it shall prescribe as a condition of the further prosecution of the appeal.

**28-27-10. Deposit for undertaking - Waiver.**

Superseded by N.D.R.App.P., Rule 7.

**28-27-11. Execution not stayed without undertaking.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-12. Undertaking to stay execution for delivery of personalty.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-13. To stay execution of conveyance.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-14. Undertaking to stay execution - To sell or deliver realty.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-15. Undertaking to stay abatement of nuisance.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-16. Undertaking to stay other executions.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-17. To stay intermediate orders.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-18. Undertaking on orders as to provisional remedies.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-19. From whom undertaking not required unless ordered by court.**

Superseded by N.D.R.Civ.P., Rule 62.

**28-27-20. When new undertaking required.**

Superseded by N.D.R.App.P., Rule 7.

**28-27-21. Undertakings in one instrument or several.**

Superseded by N.D.R.App.P., Rule 7.

**28-27-22. Determining amount and effect of undertaking - Notice - Supreme court may make order.**

Superseded by N.D.R.App.P., Rules 7, 8.

**28-27-23. Sureties must justify.**

Superseded by N.D.R.App.P., Rule 7.

**28-27-24. Effect of perfected appeal - Perishable property.**

Whenever an appeal has been perfected and the proper undertaking given or other act done as prescribed by this chapter to stay the execution or performance of the judgment or

order appealed from, all further proceedings thereon must be thereby stayed accordingly, except that the court below may proceed upon any other matter included in the action not affected by the judgment or order appealed from and may order perishable property held under the judgment or order appealed from to be sold and the proceeds paid into the court to abide the event.

**28-27-25. Reference to ascertain damages - Breach of undertaking.**

When the amount of damages to be paid by the appellant on affirmance of the judgment or order appealed from pursuant to an undertaking is not fixed by the judgment or decision of the supreme court on appeal, the district court, after the remittitur of the record from the supreme court is filed, may order a reference to ascertain such damages, the expense of which shall be included and recoverable with such damages. In all cases, a neglect for the space of thirty days after the affirmance on appeal of a judgment directing the payment of money to pay the amount directed to be paid on such affirmance must be deemed a breach of the undertaking on such appeal. A neglect for the space of sixty days after the confirmation of a report of a referee, to whom a reference has been ordered for the purpose of ascertaining the damages to be paid on the affirmance of any other judgment or order appealed from, to pay the amount of damages so ascertained, and the costs of such reference must be deemed a breach of the undertaking on such appeal. The dismissal of an appeal by the appellant or by the court for want of prosecution, unless the court at the time shall order otherwise, renders the sureties upon the undertaking or bond given under this chapter liable in the same manner and to the same extent as if the judgment or order appealed from had been affirmed.

**28-27-26. Amendment of appeals.**

Superseded by N.D.R.App.P., Rule 3.

**28-27-27. Motion for new trial not necessary.**

Superseded by N.D.R.Civ.P., Rule 59.

**28-27-28. Errors on face of record and intermediate orders reviewable.**

Superseded by N.D.R.App.P., Rule 35.

**28-27-29. Power of supreme court on appeals.**

Superseded by N.D.R.App.P., Rule 35.

**28-27-29.1. Orders separately reviewable on appeal.**

The supreme court, without a motion for judgment notwithstanding the verdict, or a motion in the alternative for such judgment or for a new trial, first made in the trial court, may review the ruling on the motion for a directed verdict on appeal from the judgment, and may order judgment to be entered when it appears from the testimony that a verdict should have been so directed. It also may so order on appeal from an order denying a motion for judgment notwithstanding the verdict, or on appeal from an order denying a motion for judgment in accordance with the motion for a directed verdict if no verdict was returned. On appeal from an order made upon a motion in the alternative for judgment notwithstanding the verdict or for a new trial, the court shall review the whole order and may reverse, affirm, or modify the order as to any and all parties.

**28-27-30. Clerk to remit record and decision.**

Superseded by N.D.R.App.P., Rules 36, 40, 41, 45.

**28-27-31. When new trial ordered - Time limited.**

Superseded by N.D.R.App.P., Rule 35.

**28-27-32. Appeals in all actions tried to the court without a jury.**

Repealed by S.L. 1971, ch. 311, § 2.

**28-27-33. Printing of abstracts not required.**

Superseded by N.D.R.App.P., Rules 10, 28.

**28-27-33.1. Supreme court to establish rules regarding briefs.**

The supreme court of North Dakota is hereby empowered to promulgate rules pertaining to the forms and contents of briefs in cases and proceedings in the supreme court.

**28-27-34. Filing of briefs.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-35. Briefs.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-36. Opinions of court to parties.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-37. Affirmance or dismissal upon default.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-38. Rehearing.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-39. Petitions for rehearing - Form of.**

Repealed by S.L. 1947, ch. 236, § 2.

**28-27-40. Costs for briefs.**

Repealed by S.L. 1947, ch. 236, § 2.