

October 14, 2015

Hon. Dale V. Sandstrom
Supreme Court
Judicial Wing, First Floor
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

Justice Sandstrom:

The Board of Governors of the Association would like the Joint Committee on Attorney Procedures to look at a possible change to a Rule.

The Board believes the following exception to Rule of Court 11.2 would make it easier for an attorney to withdraw from a case, when a case has yet to be filed. A recent Ethics Opinion on this question was issued, and the opinion states a lawyer cannot ethically withdraw from a civil case, without court approval under N.D.R.Ct. 11.2, when the case has never been filed with a court. There are situations, however, where filing the case makes little sense, and only costs the attorney or their clients money. In discussing the issue, the Board believes it would be appropriate to change the rule to avoid situations where lawyers are forced to file actions, which would not otherwise need to be filed, for the sole purpose of withdrawing as counsel. Therefore, the following Rule change is requested:

(e) Filing Required. This rule does not apply to attorneys representing parties in civil actions that have not been filed with the court.

In these cases, an attorney is free to withdraw so long as the client is made aware, in writing, of the attorney's action. If you have any questions, please let me know.

Sincerely,

Joseph Wetch
SBAND President