

Minutes  
(unofficial until approved)  
Joint Committee on Attorney Standards  
Supreme Court Conference Rm/Conference Call  
April 29, 2016

Members Present

Judge Dann Greenwood, Chair  
George Ackre  
Jeremy Bendewald  
Duane Dunn  
Kara Johnson  
Michael McGinniss  
Alex Reichert  
Jason Steffenhagen  
Bonnie Staiger  
Jason Vendsel

Members Absent

Tom Dickson  
Judge Paul Jacobson  
Justice Dale Sandstrom  
Nick Thornton

Staff

Jim Ganje  
Tony Weiler

Chair Greenwood called the meeting to order at 10:00 a.m. and drew Committee members' attention to minutes of the February 26, 2016, meeting. It was noted that on p.5, in the underscored heading related to Rule 1.18, the 2<sup>nd</sup> reference to "potential" client should read "prospective" client

**It was moved by Kara Johnson, seconded by Bonnie Staiger, and carried that the minutes, with the noted correction, be approved.**

Rule Amendments Related to Practice by Foreign Lawyers

Chair Greenwood summarized the referral back to the Committee by the Supreme Court of issues related to practice by foreign lawyers and the related discussion at the February 26 meeting. Following that discussion, Committee members agreed to consider draft amendments to Admission to Practice Rule 3 governing pro hac vice admission and registration of in-house counsel and to Rule 5.5, Rules Professional Conduct, to incorporate to the extent possible model rule provisions related to the practice of law by foreign lawyers.

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At the request of Chair Greenwood, staff then reviewed the draft amendments to Rule 5.5 of the Rules of Professional Conduct [meeting material, pp.2-6]:

- the introductory lines to paragraph ( c ) are amended to include reference to a foreign jurisdiction in the rule’s safe-harbor provision.
- paragraph ( c)(1) is amended to incorporate model rule language permitting the performance of legal services by a foreign lawyer so long as the advice is based on advice of a lawyer licensed in North Dakota.
- new paragraph (d) is created to provide a description of who would be considered a “foreign lawyer”.
- Comment [9] is amended to describe the safe harbor created in paragraph ( c)(1) for foreign lawyers performing legal services.

Mike McGinniss noted a typographical error on p. 3, line 4, but said the draft amendments sufficiently incorporate the model rule provisions. He said he would support the draft amendments as they are consistent with the ABA’s model rule language, but also because the amendments would provide accountability for foreign lawyers practicing in the state and would support reciprocity in foreign jurisdictions for North Dakota lawyers.

Bonnie Staiger asked whether there is clear understanding of what would be the “equivalent” of a lawyer or counselor at law for purposes of the description in new paragraph (d) of a “foreign lawyer”. There was general agreement that the reference is related to someone who is a “lawyer” in the foreign jurisdiction but who may have a different title, such as “barrister” or “solicitor”.

After further discussion, **it was moved by Bonnie Staiger, seconded by Mike McGinniss, and carried that amendments to Rule 5.5 be approved for submission to the Board of Governors for review and, in the absence of any Board comment requiring Committee action, be approved for submission to the Supreme Court for its consideration.**

Staff then reviewed draft amendments to Rule 3 of the Admission to Practice Rules to incorporate model rule language related to pro hac vice admission and registration of foreign lawyers [meeting material, pp.12-19]:

- new section B is created to incorporate model rule provisions related to the pro hac vice admission of foreign lawyers.
- current section B is relettered as section C and amended in paragraph (1)(a)(1) to include affidavit requirements related to a foreign lawyer seeking to be registered as in-house counsel.

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- new concluding language is added to paragraph (1)(a)(1) to provide a description of who would be considered a “foreign lawyer” for purposes of registration.
- amendments to the Explanatory Note would be added to describe the substantive rule amendments.

With respect to the concluding language added to paragraph (1)(a)(1), staff suggested the language may be more usefully located as a new section E as it would apply to the foreign lawyer provisions in both the pro hac vice and registration sections.

Mike McGinniss said the draft amendments adequately blend the model rule language into the current North Dakota rule.

**After discussion, it was moved by Mike McGinniss, seconded by Jason Vendsel, and carried that the amendments to Rule 3 of the Admission to Practice Rules be approved for submission to the Board of Governors for review and, in the absence of any Board comment requiring Committee action, be approved for submission to the Supreme Court for its consideration.**

#### Licensure of Military Spouse Lawyers

Chair Greenwood summarized the Supreme Court’s referral regarding a licensing process for military spouse lawyers and the Committee’s discussion at the February 26 meeting. Committee members agreed to consider draft amendments related to the licensure or certification of military spouse lawyers.

At the request of Chair Greenwood, staff then reviewed a draft admission to practice rule that would provide a certification process for military spouse lawyers [meeting material, pp.45-47]. He said the draft is based largely on a Colorado rule [meeting material, pp.48-49], which appeared to be the more complete of the various rule provisions reviewed at the last meeting. He said the draft would essentially allow the lawyer spouse of a military member stationed in North Dakota to practice law on a provisional basis. He noted that Penny Miller had reviewed the draft and suggested the following modifications: 1) that the fee amount for certification should be the same as the fee for a lawyer who has been licensed for five or more years and that the fee should be paid annually, 2) grounds for termination should include that the military spouse lawyer is no longer on active status, and 3) for the sake of consistency with other rules, the twenty-eight day timeframe in sections F and G for actions following termination of certification should be thirty days.

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Duane Dunn asked whether a military lawyer is allowed to otherwise practice law in the state. Kara Johnson said that, as a “federal” lawyer, a military lawyer could perform certain legal services since the lawyer is licensed in some state although perhaps not in North Dakota. She said a military lawyer could, for example, write a will if the lawyer is on the base and writing the will for a military member.

Mike McGinniss said practice of law by a military lawyer would generally have to be related to the lawyer’s federal work. He said a military lawyer would not necessarily be authorized to provide state-specific legal representation.

Alex Reichert cautioned that there may be some confusion regarding status if one military spouse is able to practice law under the certification but the other spouse, who also may be a lawyer, could not.

Judge Greenwood asked whether there is any requirement that the military spouse lawyer actually be present *in* North Dakota to obtain certification.

Tony Weiler noted that there are many lawyers who are licensed in North Dakota but are not domiciled in the state.

Mike McGinniss observed that establishing a residency requirement relating to bar practice may be problematic from the standpoint of privileges and immunities.

Alex Reichert said he understood the motivation for providing a certification process for military spouse lawyers, but said he would not favor any more expansive approach than that represented in the draft.

Following further discussion, **it was moved by Mike McGinniss, seconded by Duane Dunn, and carried that the proposed rule on military spouse certification, with the modifications suggested by Penny Miller, be approved for submission to the Board of Governors for review and, in the absence of any Board comment requiring Committee action, be approved for submission to the Supreme Court for its consideration.**

Rule 3.2 (Service) - Rules for Lawyer Discipline - Revised Draft Amendments

Committee members next reviewed revised draft amendments to Rule 3.2, Rules for Lawyer Discipline [meeting material, pp.50-52]. Initial draft amendments had been referred to the

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Committee by the Supreme Court and reviewed at the February 26 meeting. The draft amendments were held over for further revision.

Kara Johnson reviewed the revised draft amendments, which more fully reflect recent rule changes and the advent of electronic service. The draft amendments also distinguish between service in informal and formal discipline cases.

**It was moved by Kara Johnson, seconded by Bonnie Staiger, and carried that the amendments to Rule 3.2 be approved for submission to the Board of Governors for review and, in the absence of any Board comment requiring Committee action, be approved for submission to the Supreme Court for its consideration.**

General Business

Tony Weiler noted that the SBAND Board of Governors is scheduled to meet on June 15 and the Committee is next scheduled to meet on June 14, which would complicate timely review of the Committee's proposals. He said he would pursue the possibility of a special meeting of the Board to review the proposals before the June meeting dates.

There being no further discussion, the meeting was adjourned at 10:55 p.m.