

Joint Committee on Attorney Standards

North Dakota Supreme Court
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20160181

Hon. Dann E. Greenwood, Chair
51 Third St. E, Suite 202
Dickinson, ND 58601
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April 29, 2016

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

APR 29 2016
STATE OF NORTH DAKOTA

Honorable Gerald W. Vandewalle
Chief Justice
North Dakota Supreme Court
600 E. Boulevard
Bismarck, ND 58505-0530

Re: Admission to Practice Rules - Proposed Amendments

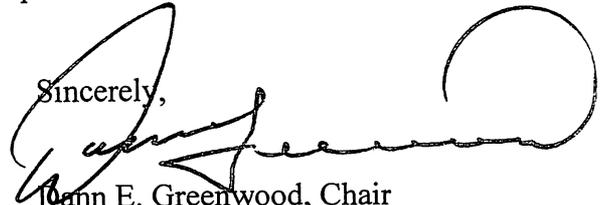
Dear Chief Justice Vandewalle:

The Joint Committee on Attorney Standards has reviewed proposed amendments to the Admission to Practice Rules prepared by the Board of Law Examiners and subsequently referred to the Joint Committee by the Supreme Court. The Joint Committee's consideration of the amendments was assisted by a review of the amendments by Penny Miller, Secretary-Treasurer of the Board of Law Examiners. The proposed amendments are regarded as generally unexceptional and directed at enhancing rule provisions concerning the admission to practice process. The admission to practice rule amendments are accompanied by a technical, conforming amendment to Rule 5.5, Comment [7], of the Rules of Professional Conduct. This amendment is related to the proposed amendment to Rule 3(A)(6) of the Admission to Practice Rules. Following discussion and consideration of the proposed amendments, the Joint Committee approved the amendments for submission to the Supreme Court pending review by the SBAND Board of Governors.

Under Administrative Rule 38, Section 3B, the Committee is required to submit its recommendations to the SBAND Board of Governors for review and comment. The Board has reviewed the proposed amendments. By a letter dated April 25, 2016, from Joe Wetch, SBAND President, the Board indicated its approval of the proposed amendments. A copy of the letter is included.

I am pleased to submit the proposed amendments to the Supreme Court for its consideration.

Sincerely,



Dann E. Greenwood, Chair
Joint Committee on Attorney Standards

DEG/

cc: Penny Miller, Clerk of the Supreme Court
Jim Ganje



State Bar Association of North Dakota

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Tony J. Weiler • *Executive Director*

April 25, 2016

Hon. Dann E. Greenwood
Judge of the District Court
51 Third St. E., Ste. 202
Dickinson, ND 58601

Re: Joint Committee on Attorney Standards

Dear Judge Greenwood,

I am in receipt of letters from the Joint Committee on Attorney Standards dated March 2, 3, and 4. Each letter contained Rules modified by the JCAS, and sent to the State Bar Association's Board of Governors under Administrative Rule 38 for review and comment.

The Board met this past Saturday, and reviewed the proposed changes to the Rules of Professional Conduct and to the Admission to Practice Rules. The Board discussed each suggested change and has no substantive comments in opposition. In fact, the Board passed three separate motions approving the changes explained by, and attached to, each of your separate letters.

The Board of Governors and I thank you and your committee for all the hard work you do.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Wetch Jr.".

Joseph A. Wetch Jr.
President

**Summary of Amendments to the North Dakota Admission to Practice Rules
February 2016**

In September 2015, the State Board of Law Examiners forwarded to the Supreme Court proposed amendments to the Admission to Practice Rules, which were forwarded to the Joint Committee on Attorney Standards. A summary of the amendments is below, the attached amendments reflect the . The following is a summary of those amendments reviewed by the Committee.

Rule 2(E) Reapplication and Rehabilitation

Lines 103 - 106 - The rule currently provides no guidance as to whether an applicant, who passes the bar exam but is denied on the basis of character and fitness, must retake the bar exam. The proposal requires that after two years, the person previously denied must retake the bar exam unless they are licensed and in good standing somewhere else. The two-year time frame is consistent with the time frame in Rule 7(B) that permits someone to apply based on an adequate test score within 2 years of the test.

Rule 3(A)(6) Pro Hac Vice Admission and Registration of Nonresident Lawyers

Lines 164 - 173 - This proposal provides a different procedure for nonresident lawyers who participate in alternative dispute resolution matters. The proposed amendment recognizes the burdensome nature of the registration requirements for nonresident attorneys participating in an occasional alternative dispute resolution matter.

Lines 174, 184-185, 204-207, 238-239 and 240-242 are clean up amendments should the amendments on lines 164-173 be approved.

An amendment to Line 99 Comment 7 of N.D.R. Prof. Conduct 5.5 is necessary if these amendments are approved.

Rule 6.1(A)(1) Temporary License for Lawyers Applying for Admission

Line 265 - Clarification is necessary to ensure the lawyer who applies for a temporary license remains licensed and in good standing in the jurisdiction they are using to support their application. It has come to our attention that some states do not require licensure for a lawyer to be considered in good standing.

Line 294 - Clarifies where formal disciplinary proceedings can be instituted for the Board to summarily revoke the temporary license.

for the Board to summarily revoke the temporary license.

Line 295-296 - Follows the amendment in Line 275.

Rule 7(A)(1) Admission on Motion

Lines 306 and 309 clarifies the requirement that a person needs to be licensed to apply for admission based on years of practice.

Rule 11(A) & (B) Interim Revocation of Conditional Admission/License

Lines 367 - 368, 374, 377, 378, 380, and 381 - 382 - Once a person is admitted or relicensed with conditions, the person is no longer an applicant. Therefore, the term “conditional admittee or licensee” is proposed to replace “applicant”

Rule 12 Revocation of Conditional Admission/License

Lines 385 - 388, 390, 396 and 404 - Again proposing “conditional admittee or licensee” to replace “applicant”.

1 **Rule 2. Standards for Admission**

2 A. Essential Eligibility Requirements. Applicants must meet the following essential eligibility
3 requirements for the practice of law:

4 1. The ability to be honest and candid with clients, lawyers, courts, the Board, and others;

5 2. The ability to reason, recall complex factual information, and integrate that information with
6 complex legal theories;

7 3. The ability to communicate with clients, lawyers, courts, and others with a high degree of
8 organization and clarity;

9 4. The ability to use good judgment on behalf of clients and in conducting one's professional
10 business;

11 5. The ability to conduct oneself with respect for and in accordance with the law;

12 6. The ability to avoid acts which exhibit disregard for the rights or welfare of others;

13 7. The ability to comply with the requirements of the North Dakota Rules of Professional
14 Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of
15 a Court or tribunal;

16 8. The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers,
17 courts, and others;

18 9. The ability to use honesty and good judgment in financial dealings on behalf of oneself,
19 clients, and others; and

20 10. The ability to comply with deadlines and time constraints.

21 B. Character and Fitness Standards and Investigation

22 1. The applicant shall have the burden of proving that the applicant possesses good moral

23 character and fitness to practice law.

24 a. The Board shall determine whether an applicant's moral character is such as permits a
25 positive recommendation when the applicant's record of conduct indicates that the
26 applicant is presently honest, trustworthy, diligent, and reliable.

27 b. The Board shall determine whether an applicant possesses the present fitness to carry out
28 professional duties to clients, courts and the profession. Fitness involves the assessment
29 of mental and emotional health as it affects the competence of a prospective lawyer. An
30 applicant may be of good moral character, but may be incapacitated from proper
31 discharge of the duties as a lawyer by a mental or emotional illness or condition.

32 c. When an applicant's record of conduct includes inappropriate behavior - such as, for
33 example, an instance of any of the items listed below - the Board will make further
34 inquiry before deciding whether the applicant possesses the good moral character and
35 fitness to practice law required for a positive recommendation:

36 (1) unlawful conduct;

37 (2) academic misconduct;

38 (3) making false statements;

39 (4) misconduct in employment;

40 (5) acts involving dishonesty, fraud, deceit or misrepresentation;

41 (6) abuse of legal process;

42 (7) neglect of financial responsibilities;

43 (8) neglect of professional obligations;

44 (9) violation of an order of a court;

- 45 (10) evidence of mental or emotional instability;
- 46 (11) evidence of drug or alcohol dependency;
- 47 (12) denial of admission to the bar in another jurisdiction;
- 48 (13) disciplinary action by a lawyer disciplinary agency or other professional agency of
- 49 any jurisdiction.

50 d. In determining whether the present moral character and fitness of an applicant qualifies
51 the applicant for a positive recommendation, the Board will assess the weight and
52 significance of any inappropriate conduct by considering the following factors:

- 53 (1) the applicant's age at the time of the conduct;
- 54 (2) the recentness of the conduct;
- 55 (3) the reliability of the information concerning the conduct;
- 56 (4) the seriousness of the conduct;
- 57 (5) the factors underlying the conduct;
- 58 (6) the cumulative effect of conduct or information;
- 59 (7) the evidence of rehabilitation;
- 60 (8) the applicant's positive social contributions since the conduct;
- 61 (9) the applicant's candor in the admissions process;
- 62 (10) the materiality of any omissions or misrepresentations.

63 2. The Board may employ such assistance in conducting the character and fitness investigation
64 as it deems necessary, including a character report by the National Conference of Bar Examiners or
65 further investigation by the Character and Fitness Committee.

66 3. At any stage of the registration or application proceedings, the Board may request the

67 applicant to appear before it or a designated Board member to answer any questions.

68 C. Independent Evaluation. The Board may require further evidence of an applicant's mental
69 stability and fitness to practice law reasonably related to the standards for admission, which may
70 require the applicant to undergo an independent evaluation by a licensed professional selected by the
71 Board. The applicant shall be required to complete any necessary releases to facilitate the evaluation.
72 The Board shall request a written report from the professional, including results of all tests made,
73 diagnoses and conclusions. A copy of the report shall be provided to the applicant when the Board
74 receives the report. The cost of any independent evaluation required under this Rule shall be the
75 responsibility of the Board.

76 D. Character and Fitness Committee. To assist the Board in conducting such character and fitness
77 investigation as it deems necessary, the Board may appoint a Character and Fitness Committee.

78 1. The Committee shall consist of five persons no more than three of whom may be lawyers
79 currently licensed to practice law in North Dakota. Committee members shall be appointed to five-
80 year terms. Upon the initial appointment of the Committee, its members shall determine by lot the
81 term length of each member. From its members, on an annual basis, the Board shall select a
82 Chairperson. Committee members shall serve without compensation except that they shall be
83 reimbursed their actual expenses incurred in attending Committee meetings.

84 2. The Character and Fitness Committee shall investigate issues concerning the moral character
85 and fitness qualifications of a registrant or an applicant for admission as referred by the Board. Upon
86 receipt of such referral, accompanied by all information regarding the registrant or applicant as
87 obtained by the Board, the Character and Fitness Committee shall review the information and
88 conduct such additional investigation as it deems necessary in order to make its report to the Board.

89 The Committee shall conduct a personal interview with the registrant or applicant regarding the
90 issues referred by the Board.

91 3. The Character and Fitness Committee shall consider the issues referred by the Board in
92 accordance with:

93 a. The provisions of this Rule; and

94 b. The applicable decisions of the Supreme Court of North Dakota and the Supreme Court
95 of the United States.

96 4. Upon completion of the investigation the Committee shall submit to the Board its written
97 report concerning the issues referred by the Board. After review by the Board, a copy of the report
98 shall be forwarded to the applicant only if the Board recommends a conditional admission or makes
99 a negative recommendation.

100 E. Reapplication and Rehabilitation. Any applicant who receives a negative recommendation for
101 admission based on the lack of moral character and/or fitness that has been accepted by the Supreme
102 Court, may reapply for admission by filing a new application two years after the date of the Board's
103 negative recommendation or such other period as may be set by the Board or the Court. The
104 applicant must take the bar examination if the new application is received later than two years
105 following the negative recommendation, unless the applicant is licensed and a member in good
106 standing of the bar of another state or the District of Columbia. The applicant shall produce clear and
107 convincing evidence of the applicant's rehabilitation and present moral character and fitness to
108 practice law.

109 [Amended effective August 1, 2001; March 1, 2009; April 1, 2013; _____.]

110 **Rule 3. Pro Hac Vice Admission and Registration of Nonresident Lawyers**

111 A. Pro Hac Vice Admission. Pro hac vice admission is required for all nonresident lawyers
112 admitted and licensed to practice law in another state or the District of Columbia, but not licensed
113 in North Dakota, and who engage in the practice of law in this state by appearing, either in person,
114 by signing pleadings, or by being designated as counsel in actions filed in state courts, administrative
115 agencies, or tribunals.

116 1. Filing Requirements.

117 a. A nonresident lawyer may occasionally be permitted to appear as counsel in an action in
118 a trial court of this state or before an administrative agency or tribunal in this state if the
119 lawyer first:

- 120 (1) designates an associate lawyer admitted and licensed to practice law in this state;
- 121 (2) files a motion requesting permission to appear and an affidavit in support of the
122 motion with the clerk of the trial court, the hearing officer of the administrative agency
123 matter, or the presiding officer of the tribunal;
- 124 (3) files a copy of the motion and affidavit with the State Board of Law Examiners at the
125 same time they are filed with the appropriate individual identified in Section A(1)(a)(2);
- 126 (4) remits to the State Board of Law Examiners the fee required for an lawyer who has
127 been licensed in this state for five years or more or certifies the lawyer has paid the fee
128 to the State Board of Law Examiners during that calendar year; and
- 129 (5) obtains permission from the court, hearing officer, or presiding officer.

130 b. In the affidavit in support of the motion requesting permission to appear in a North
131 Dakota action, the nonresident lawyer must state:

132 (1) the jurisdictions in which the lawyer is admitted to practice law and the number of
133 years admitted;

134 (2) whether the lawyer is presently subject to a disciplinary proceeding in any
135 jurisdiction;

136 (3) whether the lawyer is under any restriction or probation in the practice of law in any
137 jurisdiction in which the lawyer is licensed;

138 (4) whether the lawyer is now or has ever been suspended or disbarred from a court in
139 any jurisdiction;

140 (5) the number of North Dakota actions in which the nonresident lawyer has appeared
141 during the prior three years, and whether the lawyer has ever registered under this rule;

142 (6) the address, telephone number and e-mail address for the lawyer; and

143 (7) that the required fee has been remitted to the State Board of Law Examiners.

144 2. The motion requesting permission to appear must be filed no later than 45 days after service
145 of the pleading, motion, or other paper.

146 3. Names and Appearances. The name and address of the associate lawyer must be shown on
147 all papers served and filed. The associate lawyer shall appear personally and, unless excused by the
148 court, hearing officer, or presiding officer, remain in attendance with the nonresident lawyer in all
149 appearances before the court, administrative agency, or tribunal.

150 4. Frequency of Motions. Separate permission is required for each action in which a
151 nonresident lawyer appears in a North Dakota state court proceeding, before an administrative

152 agency, or before another tribunal in the state.

153 5. Appeal.

154 a. If an lawyer desires to appear in a proceeding before a North Dakota appellate court, and
155 the lawyer obtained permission to appear in a proceeding involving the same action in a
156 North Dakota state trial court, administrative agency, or tribunal, the lawyer only needs to
157 file an updated affidavit with the Clerk of the Supreme Court. An additional filing fee is not
158 required to be remitted to the State Board of Law Examiners, unless it is a new calendar year.

159 b. If a lawyer desires to appear in a proceeding before a North Dakota appellate court, and
160 the lawyer did not obtain permission to appear in a proceeding involving the same action in
161 a North Dakota state trial court, administrative agency, or tribunal, the lawyer shall file a
162 motion and affidavit with the Clerk of the Supreme Court requesting permission to appear.

163 The motion, affidavit, and fee must be submitted as otherwise provided in Section A(1).

164 6. Alternative dispute resolution process. If a nonresident lawyer represents a client in an
165 alternative dispute resolution process in this state, except one involving an administrative agency
166 proceeding, the lawyer must file with the State Board of Law Examiners an affidavit containing the
167 information required in this rule and the fee, and provide a copy to the mediator. An associate
168 lawyer admitted and licensed to practice law in this state must also provide a letter confirming the
169 designation as an associate and whether the arbitrator or mediator requires the associate lawyer to
170 be present during the alternative dispute resolution process.

171 a. The nonresident lawyer cannot proceed with an alternative dispute resolution process
172 without confirmation from the State Board of Law Examiners that the lawyer has met all
173 filing requirements of this rule.

174 ~~B. Registration.~~ A nonresident lawyer must register under this section if the lawyer represents a
175 ~~client in an alternative dispute resolution process in this state~~ or is employed in North Dakota as in-
176 house counsel exclusively for a corporation or its subsidiaries or affiliates, an association, or a
177 business whose lawful activities are other than the practice of law or the provision of legal services.
178 The lawyer must be admitted and licensed to practice law in another state or the District of
179 Columbia, but not licensed in North Dakota, and, except for the time requirements in Rule 7A, must
180 be otherwise qualified for admission to the practice of law in this state.

181 1. Registration Requirements. A lawyer must file with the State Board of Law Examiners the
182 following:

183 a. An affidavit requesting permission to render legal services in North Dakota for the
184 calendar year as in-house counsel ~~or by representing a client in an alternative dispute~~
185 ~~resolution process~~ and stating:

186 (1) the jurisdictions in which the lawyer is admitted to practice law and the number of
187 years of admission;

188 (2) whether the lawyer is presently subject to a disciplinary proceeding in any
189 jurisdiction;

190 (3) whether the lawyer is under any restriction or probation in the practice of law in any
191 jurisdiction in which the lawyer is licensed;

192 (4) whether the lawyer is now or has ever been suspended or disbarred in any
193 jurisdiction;

194 (5) whether the lawyer received a juris doctor or equivalent degree from a law school
195 approved or provisionally approved for accreditation by the American Bar Association;

196 and

197 (6) whether the lawyer has appeared in any North Dakota actions based on pro hac
198 vice admission during the past three years, and how many years the lawyer previously
199 registered under this rule.

200 b. With respect to a lawyer registering as in-house counsel, an affidavit from an officer,
201 director or general counsel of the lawyer's employer in this state attesting that the registrant
202 is employed as a lawyer exclusively for the employer, that the registrant is an individual of
203 good moral character, and that the nature of the employment qualifies the lawyer for
204 registration under this rule. ~~With respect to a lawyer registering to represent a client in an
205 alternative dispute resolution process, a letter from the disciplinary authority in each
206 jurisdiction in which the lawyer is admitted indicating the lawyer is in good standing in the
207 jurisdiction.~~

208 c. The fee required for a lawyer who has been licensed in this state for five years or more.

209 2. Frequency of Registration. Registration is required for each calendar year in which a
210 nonresident lawyer provides legal services in this state as provided in this rule and N.D.R. Prof.
211 Conduct 5.5.

212 3. Continuing Legal Education Requirements. Each nonresident lawyer who is registered as
213 in-house counsel under this section must complete not fewer than 45 hours of approved coursework
214 in Continuing Legal Education during each three-year period the lawyer is registered and must file
215 a report as provided in the North Dakota Rules for Continuing Legal Education.

216 4. Limitation on Registration. A nonresident lawyer may provide legal services under this rule
217 for five years or until the lawyer becomes eligible for admission based on practice as provided by

218 Rule 7A, whichever is earlier. After that time, the lawyer must apply for and be admitted to the
219 practice of law in North Dakota to provide any legal services in this state.

220 5. Automatic Termination of Registration. Permission to render legal services based on
221 registration expires at the end of each calendar year, if employment by the employer filing the
222 affidavit required by this rule is terminated, or if the nonresident lawyer becomes eligible for
223 admission under Rule 7A.

224 6. Pro Hac Vice Admission Separate. If a nonresident lawyer registered as in-house counsel
225 under this section desires to appear, either in person, by signing pleadings, or by being designated
226 as counsel in actions filed in courts, administrative agencies, or other tribunals in this state, a
227 separate motion for pro hac vice admission is required under this rule. However, a separate fee is
228 not required, provided in-house counsel has registered under this rule.

229 C. Ineligibility for Pro Hac Vice Admission or Registration. A nonresident lawyer who is currently
230 under suspension, disbarment, or license restriction in any jurisdiction is not eligible for pro hac vice
231 admission or registration under this rule.

232 D. Use of Fees. Fees collected by the State Board of Law Examiners under this rule must be
233 distributed in the manner provided for the distribution of license fees under N.D.C.C. Section 27-12-
234 04.

235 EXPLANATORY NOTE

236 Rule 3 was amended, effective March 1, 2005, to incorporate N.D.R.Ct. 11.1, with
237 modifications, and provide for pro hac vice admission for all adjudicative proceedings and for
238 registration of in-house counsel ~~and nonresident lawyers representing clients in alternative dispute~~
239 ~~resolution proceedings.~~

240 Section A(6) was added effective _____, to provide for non-resident lawyers to
241 participate in an alternative dispute resolution process under the filing requirements for pro hac vice
242 admission.

243 This rule is not limited to an appearance in a North Dakota state court action.

244 Under this rule, an appearance is not limited to actual physical presence in a court action. A
245 lawyer also makes an appearance by signing or otherwise being designated as counsel on a pleading,
246 motion, or other paper served or filed in an action venued in a North Dakota state court,
247 administrative agency, or other tribunal.

248 Section A(2) of this rule requires a motion for permission to appear to be filed within 45 days
249 of service of a pleading, motion, or other paper. If an action is commenced by service, a lawyer
250 should be aware that the action must be filed before the lawyer moves for permission to appear. If
251 the action settles before it is filed, a motion requesting permission to appear does not need to be
252 filed.

253 A lawyer seeking to take a deposition within the state of North Dakota for an action pending in
254 another jurisdiction must comply with N.D.R. Prof. Conduct 5.5.

255 SOURCES: Joint Procedure Committee Minutes of May 6-7, 1999, pages 2-7; January 28-29, 1999,
256 pages 13-16; November 7-8, 1991, page 6; October 25-26, 1990, page 19; June 21, 1984, pages 1-2;
257 Joint Committee on Attorney Standards Minutes of June 24, 2003, pgs. 5-8; September 25, 2003,
258 pgs. 2-8; November 14, 2003, pgs. 2-6; February 27, 2004, pgs. 3-5; and April 16, 2004, pgs. 1-6.

259 CROSS REFERENCE: N.D.R. Prof. Conduct 5.5.

260 SUPERSEDED: N.D.R. Ct. 11.1.

261 [Amended effective March 1, 2000; amended effective March 1, 2005; April 1, 2013;]

262 **Rule 6.1 Temporary License for Lawyers Applying for Admission**

263 A. Any lawyer meeting the following qualifications may apply for the privilege to practice law
264 temporarily in North Dakota as provided in this rule.

265 1. The lawyer must be a licensed member in good standing of the bar of another state or the
266 District of Columbia and shall:

267 (a) be an applicant for admission to the North Dakota Bar under Rule 6 or Rule 7, or
268 relicensure under Rule 8, and meet all eligibility requirements of those rules; and

269 (b) not be the subject of any suspension or disbarment proceedings in any court or the
270 subject of any pending disciplinary complaints.

271 2. A lawyer who has failed the North Dakota bar examination within the past three years is
272 not eligible to apply for a temporary license.

273 B. The lawyer shall file an application with the Board, which must be attested to or sworn and
274 state;

275 1. that the lawyer has applied for admission to the practice of law in North Dakota under
276 Rule 6 or Rule 7, or relicensure on Rule 8; and

277 2. the name and address of an associate lawyer admitted and licensed to practice law in this
278 state.

279 C. Attached to the application must be a statement from the associate lawyer that the lawyer has
280 agreed to serve as an associate lawyer under this rule, is admitted and licensed to practice of law
281 in this state, and agrees to fulfill the responsibilities of an associate lawyer described under Rule

- 282 3A.
- 283 D. The application must be accompanied by a fee of \$100. All fees collected under this rule
284 must be divided equally between the State Bar Association and the Board of Law Examiners.
- 285 E. Upon approval by the Board, the applicant shall be issued a temporary license to practice law
286 in this state. The temporary license is valid for no more than six months from the date of issuance
287 or, if the applicant has applied under Rule 6 for a February bar exam, and that exam is not given,
288 only until the results are available from the next bar exam offered in North Dakota.
- 289 F. The Board shall summarily revoke the temporary license if the applicant:
- 290 1. files an untruthful affidavit with the Board;
 - 291 2. fails the bar examination;
 - 292 3. fails to take the bar examination when eligible to do so;
 - 293 4. receives a negative recommendation for admission or relicensure;
 - 294 5. has formal disciplinary proceedings instituted against the applicant in any jurisdiction;
 - 295 6. is no longer licensed to practice law in the jurisdiction identified by the applicant in Rule
296 6.1A(1);
 - 297 7. withdraws the application for admission to practice law under Rule 6 or 7;
 - 298 8. is admitted to the practice of law in North Dakota under Rule 6 or 7;
 - 299 9. withdraws the application for relicensure under Rule 8; or
 - 300 10. is relicensed to practice law in North Dakota under Rule 8.

301 If the Board revokes a temporary license based on evidence of professional misconduct in this or
302 another jurisdiction, the Board shall notify the Disciplinary Board of the Supreme Court.
303 [Amended effective March 1, 2009; April 1, 2013; _____.]

304 **Rule 7. Admission by Motion**

305 A. Eligibility by Practice.

306 1. Any person who is a licensed member of the bar of another state or the District of
307 Columbia may apply for admission by motion if that person:

- 308 a. meets the requirements of Rules 1 and 2;
- 309 b. has been a licensed member of the bar of another state or the District of Columbia for
310 at least five (5) years;
- 311 c. has for at least four (4) of the last five (5) years immediately preceding the application
312 for admission on motion been actively engaged, to an extent deemed by the Board to
313 demonstrate competency in the practice of law, in one or more of the following:
- 314 (1) the private practice of law;
- 315 (2) service as a judge of a court of record.
- 316 (3) the teaching of law as an instructor in a law school or schools accredited by the
317 American Bar Association; or
- 318 (4) the performance of legal work in a legal capacity.

319 2. The application for admission by motion shall be filed with the Board. The application
320 must be accompanied by:

- 321 a. an affidavit identifying all other jurisdictions in which the applicant has applied for
322 admission and the final decision of the admitting authority in each jurisdiction;
- 323 b. certification of admission to practice and good standing by the admitting authority in
324 each jurisdiction that the applicant has identified in a. as having admitted the applicant to
325 the bar;

- 326 c. an affidavit disclosing the place or places in the other state or states or the District of
327 Columbia where the applicant has practiced law;
- 328 d. the name and post office address, whenever possible, of at least one judge of a court
329 of general jurisdiction who, during the specified period, has presided in a court before
330 which the applicant has practiced law;
- 331 e. certification by the lawyer disciplinary authority in each jurisdiction where the
332 applicant has been admitted to the bar disclosing all prior or pending disciplinary
333 proceedings against the applicant in that jurisdiction;
- 334 f. the affidavits of at least two lawyers from another jurisdiction where the applicant has
335 been admitted to the bar which attest to the applicant's good moral character and fitness to
336 practice law. The affidavits must be from lawyers who practiced law contemporaneously
337 with the applicant; and
- 338 g. verification of 45 hours of approved or approvable course work in Continuing Legal
339 Education, three hours of which shall be in the area of ethics or course work commonly
340 considered professional responsibility, during the 42-month period immediately
341 preceding the application for admission to the bar of this state.

342 3. If the Board determines that the applicant's legal experience does not demonstrate
343 sufficient competency in the practice of law, it shall require the applicant to take a lawyer's
344 examination. The Board shall set the date, time, place and content of each examination.

345 B. Eligibility by Test Score.

- 346 1. An applicant may be eligible for admission by motion provided the applicant:
- 347 a. meets the requirements of Rules 1 and 2;

348 b. has received a scaled score of 85 or above on the Multistate Professional
349 Responsibility Examination (MPRE) within five years prior to of filing an application;
350 c. has received a scaled score of 260 or above on the Uniform Bar Examination (UBE)
351 given in another jurisdiction; or
352 d. has received a scaled score of 150 or above on the Multistate Bar Examination (MBE)
353 taken as a part of and at the same time as the essay or other written bar examination given
354 by another jurisdiction that did not use the UBE on the date of the applicant's
355 examination; and has been admitted to the bar of the jurisdiction in which MBE
356 examination was written.

357 2. Proof of the UBE or MBE score and a completed application must be received at the
358 offices of the Board within two years of the date of the examination in the jurisdiction of
359 admission where the examination was written.

360 C. The application for admission by motion must be referred to the Board which shall investigate
361 the same and its sufficiency, including the moral character of the applicant.

362 D. Taking into consideration each applicant's moral character, and the results of the lawyer's
363 examination, if required, the Board shall make a recommendation to the Supreme Court
364 regarding the admission of each applicant to the bar.

365 [Amended effective August 1, 2001; March 1, 2009; September 1, 2010; April 1, 2013; _____.]

366 **Rule 11. Interim Revocation of Conditional Admission/License**

367 A. Upon receiving sufficient evidence demonstrating that an applicant conditional admittee or
368 licensee:

- 369 1. has not complied with any condition and
370 2. poses a substantial threat of irreparable harm to the public,

371 the Board shall transmit the evidence to the Supreme Court together with a proposed order for
372 interim revocation of the conditional admission or license.

373 B. At any stage, the Supreme Court may enter an interim order immediately revoking the
374 conditional admission or license of an applicant conditional admittee or licensee pending final
375 disposition of the proceedings predicated upon the noncompliance with conditions and conduct
376 causing harm or may order such other action as deemed appropriate. Upon the request of the
377 applicant conditional admittee or licensee who is subject to the Board's request for interim
378 revocation, the Supreme Court may provide the applicant conditional admittee or licensee an
379 opportunity to be heard before determining the Board's request. Upon request by the Board or
380 the applicant conditional admittee or licensee after entry of an interim revocation order, the
381 Supreme Court shall within ten days provide an opportunity for the applicant conditional
382 admittee or licensee to demonstrate that the order should not remain in force.

383 **Rule 12. Revocation of Conditional Admission/License**

384 A. Within 60 days after the mailing of the notification of intent to revoke the conditional admission
385 or license, the Board shall set a hearing on the revocation and inform the applicant conditional
386 admittee or licensee of the time and place of the hearing and the applicant's conditional admittee's
387 or licensee's right to be represented by counsel and to present any witnesses as the applicant
388 conditional admittee or licensee may choose.

389 B. The hearing on the revocation shall be limited to the issue of whether any condition of
390 admission or licensure has been violated by the applicant conditional admittee or licensee.

391 C. The hearing must be on the record and, at the discretion of the Board, may be held before the
392 Board or a hearing examiner appointed by the Board. The Board shall set forth in a report its
393 findings of fact, conclusions and recommendation to the Supreme Court. If a hearing examiner is
394 appointed to conduct the hearing, the findings and conclusions of the hearing examiner, to the extent
395 that the Board adopts them, become the findings and conclusions of the Board.

396 D. The Board shall notify the applicant conditional admittee or licensee by certified mail of its
397 findings of fact, conclusions and recommendation and shall also file the report with the Supreme
398 Court.

399 E. Within 20 days of service of the report, objections to the report may be filed with the Supreme
400 Court. Within 50 days after service of the report, briefs limited to the filed objections may be filed.
401 Oral argument may be requested only if objections are filed, or may be set upon the court's own
402 motion. Briefing and oral argument will be as provided in the North Dakota Rules of Appellate
403 Procedure.

404 F. An applicant conditional admittee or licensee who has had a conditional admission or license
405 revoked is not eligible to apply for admission or licensure for a period of five years from the Order
406 of Revocation.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

1 (a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulation
2 of the legal profession in that jurisdiction.

3 (b) A lawyer admitted to practice in another jurisdiction and not in this jurisdiction who
4 performs legal services in this jurisdiction on a temporary basis does not engage in the unauthorized
5 practice of law in this jurisdiction when:

6 (1) the lawyer who is an employee of a client, acts on the client's behalf, or on behalf
7 of the client's commonly owned affiliates, except for work for which pro hac vice
8 admission or registration under Admission to Practice R.3 is required;

9 (2) the lawyer acts with respect to a matter that arises out of the lawyer's
10 representation of a client in a jurisdiction in which the lawyer is admitted to practice,
11 except for work for which pro hac vice admission or registration under Admission
12 to Practice R.3 is required;

13 (3) with respect to matters for which registration or pro hac vice admission is
14 available under Admission to Practice R.3, the lawyer is authorized to represent a
15 client or is preparing for a matter in which the lawyer reasonably expects to be so
16 authorized;

17 (4) with respect to matters, transactions or proceedings pending in or substantially
18 related to this jurisdiction and for which pro hac vice admission is not available
19 under Admission to Practice R.3, the lawyer is associated in the matter, transaction
20 or proceeding with a lawyer admitted to practice in this jurisdiction who actively

21 participates in the representation of the client in the matter, transaction or proceeding;

22 or

23 (5) the lawyer performs a service that may be performed by a person without a
24 license to practice law or without other authorization from a federal, state or local
25 governmental body.

26 (c) A lawyer admitted to practice in another jurisdiction but not in this jurisdiction, who
27 establishes an office or whose presence is other than temporary in this jurisdiction does not engage
28 in the unauthorized practice of law in this jurisdiction when:

29 (1) the lawyer who is an employee of a client, acts on the client's behalf, or on behalf
30 of the client's commonly owned affiliates, and the lawyer is eligible for and has
31 complied with the lawyer registration rules under Admission to Practice R.3, or

32 (2) the lawyer renders services in this jurisdiction pursuant to other authority granted
33 by federal law or a law or Court rule of this jurisdiction.

34 (d) A lawyer who is not admitted to practice in this jurisdiction shall not represent or hold
35 out to the public that the lawyer is admitted to practice law in this jurisdiction. A lawyer who
36 practices law in this jurisdiction under paragraph(b) or (c) shall disclose in writing to the client that
37 the lawyer is not licensed in this jurisdiction.

38 (e) A lawyer shall not assist another person in the unauthorized practice of law.

39 **Comment**

40 [1] Paragraph (a) states the general rule that each state judiciary may regulate the legal
41 profession within the borders of the jurisdiction. A lawyer may regularly practice law only in a
42 jurisdiction in which the lawyer is admitted to practice. The practice of law in violation of lawyer-

43 licensing standards of another jurisdiction constitutes a violation of these Rules. This Rule does not
44 restrict the ability of lawyers authorized by federal statute or other federal law to represent the
45 interests of the United States or other persons in any jurisdiction.

46 [2] There are occasions when out-of state lawyers perform services in this state on a
47 temporary basis under circumstances that do not create a significant risk of harm to clients, the
48 courts, or the public. Paragraph (b) identifies five situations in which the out-of-state lawyer may
49 perform services in this state without fear of violating this Rule. By creating these five specific “safe
50 harbors” for multijurisdictional practice, this Rule does not address the question of whether other
51 conduct constitutes the unauthorized practice of law. The fact that conduct is not specifically
52 included or described in this Rule is not intended to imply that such conduct is the unauthorized
53 practice of law. Nothing in this Rule is intended to authorize a lawyer to establish an office or other
54 permanent presence in this jurisdiction without being admitted to practice here. In addition, nothing
55 in this Rule is intended to authorize an out-of-state lawyer to solicit clients in this jurisdiction.

56 [3] Paragraph (b)(1) permits in-house corporate counsel and governmental lawyers to
57 represent their employers and their employers’ commonly-owned affiliates on a temporary basis
58 without being admitted to the bar of this state. The safe harbor in this rule does not cover
59 appearances in court or other work for which pro hac vice admission or registration is required under
60 Admission to Practice R.3.

61 [4] Paragraph (b) (2) is intended to provide broad protection to several kinds of work in this
62 jurisdiction that are related to the lawyer’s work in the lawyer's home state, such as negotiations,
63 contracts, depositions and other forms of discovery, witness interviews, and meetings with clients
64 or other parties to a transaction. The Rule recognizes that it should be sufficient to rely on the

65 lawyer's jurisdiction of licensure as the jurisdiction with the primary responsibility to ensure the
66 lawyer has the requisite character and fitness to practice law. Also, the Rule recognizes that a client
67 should be able to have a single lawyer conduct all aspects of a transaction, even if the lawyer must
68 travel to other states. The safe harbor in this paragraph, however, does not cover transactions that
69 are pending in or substantially related to this state. For these state-related transactions, the out-of-
70 state lawyer is required to seek admission or to associate with a licensed North Dakota lawyer as
71 co-counsel in the representation of the client in the transaction. See paragraph (b)(4).

72 [5] Paragraph (b)(3) requires out-of-state lawyers to be admitted pro hac vice under
73 Admission to Practice R.3 to appear in all matters pending in a tribunal or administrative agency in
74 this state. This Rule provides a temporary safe harbor to a lawyer acting on a client's behalf in
75 preparatory matters before pro hac vice admission, so long as the lawyer reasonably expects to be
76 so admitted. Such preparatory work might include factual investigations and discovery in connection
77 with litigation or an administrative proceeding where the lawyer reasonably expects to be admitted
78 pro hac vice.

79 [6] Paragraph (b)(4) requires the out-of-state lawyer to associate with a duly licensed local
80 lawyer for all transactions that are pending in or substantially related to this jurisdiction and for
81 which pro hac vice admission is not available. The Rule recognizes that association with a lawyer
82 licensed in this jurisdiction is likely to protect the interests of both clients and the public. The local
83 lawyer may not serve merely as a conduit for the out-of-state lawyer, but must actively participate
84 in and share actual responsibility for the representation of the client in the matter. If the licensed
85 lawyer's involvement is merely pro forma, then both lawyers are subject to discipline under this
86 Rule.

87 [7] Paragraph (b)(5) allows an out-of-state lawyer to perform services that a person who is
88 not a lawyer may perform without a law license or other authorization from a federal, state, or local
89 governmental body, e.g., in private alternative dispute resolution contexts, a non-lawyer may serve
90 as a mediator or arbitrator. In some administrative proceedings, a non-lawyer is permitted by law
91 to appear on behalf of a party. The Rule assumes that the public is adequately protected in these
92 instances by the over-arching provisions of Rule 8.5, which subjects all lawyers performing any
93 services in this jurisdiction to the Rules of Professional Conduct. If, for example, an out-of-state
94 lawyer performing as a neutral engages in conduct in violation of these Rules, the lawyer could be
95 disciplined for the misconduct, even if serving as the neutral was not the unauthorized practice of
96 law under this Rule. It should be noted that whereas an out-of-state lawyer who represents a client
97 in ADR proceedings pending in another jurisdiction would be covered by the safe harbor in this
98 Rule, an out-of-state lawyer who represents a client in an ADR proceeding *in* North Dakota must
99 ~~register under~~ comply with Admission to Practice R.3. See paragraph (b)(3).

100 [8] Paragraph (c) creates two categories of allowable multijurisdictional practice for out-of-
101 state lawyers who establish an office or other permanent presence in the state: 1) in-house counsel
102 who comply with registration rules, and 2) lawyers performing services pursuant to federal or state
103 law or court rule.

104 [9] Paragraph (c)(1) creates a safe harbor for in-house corporate counsel or other employed
105 lawyers who establish an office or other permanent presence in the state, provided they comply with
106 the registration rules under Admission to Practice R.3. If the out-of state lawyer is not eligible for
107 registration under Rule 3, this safe harbor would not apply and the lawyer must seek licensure in this
108 jurisdiction.

109 [10] Paragraph (c) (2) permits out-of-state-lawyers to provide legal services in this state when
110 authorized to do so by federal law or state law or court rule.

111 [11] Lawyers who are not licensed to practice law in this jurisdiction must not represent or
112 hold themselves out to the public as licensed to practice law in this jurisdiction. Paragraph (d)
113 requires out-of-state lawyers practicing law in North Dakota under one of the safe harbors in
114 paragraphs (b) and (c) to disclose in writing to their clients that they are not licensed in this state.

115 [12] Limiting the practice of law to members of the bar protects the public from unqualified
116 persons performing legal services. Paragraph (e) does not prohibit a lawyer from employing the
117 services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the
118 delegated work and retains responsibility for it. See Rule 5.3. Lawyers may also provide
119 professional advice and instruction to nonlawyers whose employment requires knowledge of law;
120 for example, claims adjusters, employees of financial or commercial institutions, social workers,
121 accountants and employees of government agencies. Lawyers may assist independent nonlawyers
122 authorized by law to provide particular legal services, for example, paraprofessionals authorized to
123 provide some kinds of legal services. In addition, a lawyer may counsel nonlawyers who wish to
124 represent themselves.

125 [13] Lawyers desiring to provide pro bono legal services on a temporary basis in a
126 jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized
127 to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily
128 in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult
129 Admission to Practice R. 3.2.

130 *Reference:* Minutes of the Professional Conduct Subcommittee of the Attorney Standards

131 Committee on 11/08/85 and 01/31/86; Minutes of the Joint Committee on Attorney Standards on

132 06/24/03, 09/25/03, 11/14/03, 04/16/04, 08/06/04, 09/16/11, and 12/09/11.