

20160205

Joint Committee on Attorney Standards

North Dakota Supreme Court
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FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAY 25 2016

STATE OF NORTH DAKOTA

Hon. Dann E. Greenwood, Chair
51 Third St. E, Suite 202
Dickinson, ND 58601
Phone: (701) 227-3150

May 25, 2016

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

Re: Rule 3.2 (Service), Rules for Lawyer Discipline - Proposed Amendments

Dear Chief Justice VandeWalle:

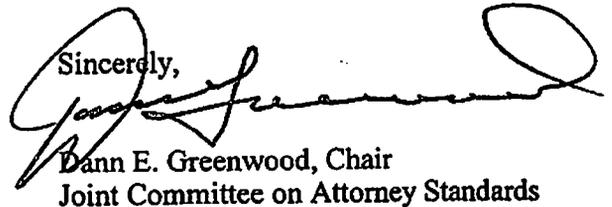
Following a referral from the Supreme Court, the Joint Committee reviewed draft amendments to Rule 3.2 of the Rules for Lawyer Discipline, which governs service requirements in lawyer discipline proceedings. After an initial review of the draft amendments at its February 26 meeting, the Joint Committee deferred consideration pending additional refinements to the amending language.

At its April 29 meeting, the Joint Committee reviewed the revised draft amendments, which were assembled by Kara Johnson, Penny Miller, and Petra Mandigo Hulm. The amendments are intended to more clearly reflect current service requirements in relation to other rule provisions, including when service is required and how service is made at different stages in the disciplinary process. The amendments are also intended to reflect the advent of electronic filing and related service processes.

The Joint Committee approved the amendments for submission to the Supreme Court, pending review and comment by the SBAND Board of Governors as required by Administrative Rule 38, Section 3B. The Board of Governors has reviewed the Committee's proposed amendments and, by a letter dated May 24, 2016, from Joe Wetch, SBAND President, has indicated its approval of the proposed amendments. A copy of the letter is included.

I am pleased to submit the Joint Committee's 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*

May 24, 2016

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

Sent via email: dgreenwood@ndcourts.gov

RE: 1) Practice by Foreign Lawyers – Proposed Amendments to Rule 5.5 ND Rules of Professional Conduct and Rule 3, N.D. Admission to Practice Rules
 2) Rule 3.2 (Service), Rules for Lawyer Discipline – Proposed Amendments
 3) Military Spouse Lawyer Certification – Proposed Rule

Dear Judge Greenwood,

The Board met today to discuss the request from the Joint Committee on Attorney Standards on the above listed Proposed Amendments and Proposed Rule.

The Board of Governors recognizes the good work done by the Joint Committee on Attorney Standards and approves of the Proposed Amendments and the Proposed Rule. The Board had no other comments.

Sincerely,

Joseph Wetch
SBAND President

cc: Jim Ganje

RULE 3.2 - RULES FOR LAWYER DISCIPLINE – PROPOSED AMENDMENTS -

RULE 3.2. SERVICE.

1 **A. Petition.** Service of a petition upon the lawyer must be made by personal service as provided for
2 in N.D.R.Civ.P. 4, or by registered or certified mail at the last address shown in the roster of licensed
3 attorneys maintained by the ~~clerk of the court~~ State Board of Law Examiners or other last known
4 address. ~~Service in all other respects is governed by the North Dakota Rules of Civil Procedure.~~

5 **B. Other Papers.**

6 ~~Service of any other reports, papers, or notices required by these rules must, unless otherwise~~
7 ~~provided by these rules, be made in accordance with Rule 5 of the North Dakota Rules of Civil~~
8 ~~Procedure:~~

9 **(1) Service-When Required.**

10 (a) In General. Other than service under subdivision (A), service of other
11 reports, papers, or notices required by these rules must be made on the lawyer,
12 unless the rules provide otherwise.

13 (b) If a Lawyer Fails to Appear. No service is required on a lawyer who is in
14 default for failing to appear. But a pleading that asserts a new claim against a
15 lawyer must be served on the lawyer under subdivision (A).

16 **(2) Service-How Made.**

17 (a) Service on a Lawyer Represented by an Attorney. If a lawyer is represented,
18 service under this rule must be made on the representing attorney unless
19 otherwise provided in these rules. If the representing attorney is providing limited
20 representation under N.D.R.Civ.P. 11(e), service must be made on the
21 representing attorney for matters within the limited scope of representation.

22 (b) Service in General. A document is served under this rule:

23 (i) Prior to a petition for discipline, for matters to be considered by an
24 inquiry committee, by:

25 (A) handing it to the person;

26 (B) leaving it:

27 (1) at the lawyer's office with a clerk or other person in charge or, if

1 no one is in charge, leaving it in a conspicuous place in the office; or,

2 (2) if the lawyer has no office or the office is closed, at the
3 lawyer's dwelling or usual place of abode with someone of
4 suitable age and discretion who resides there;

5 (C) mailing it to the lawyer's last address shown in the roster of
6 licensed attorneys maintained by the State Board of Law Examiners or
7 other last known address, in which event service is complete upon
8 mailing;

9 (D) sending it by a third-party commercial carrier to:

10 (1) the complainant at the last known address provided on the
11 complaint or on file with disciplinary counsel, in which event
12 service is completed upon deposit of the paper to be served
13 with the commercial carrier; or

14 (2) the lawyer's last address shown in the roster of licensed
15 attorneys maintained by the State Board of Law Examiners or
16 other last known address, in which event service is complete
17 upon deposit of the paper to be served with the commercial
18 carrier;

19 (E) if no address is known, by submitting an affidavit regarding
20 attempts to locate the lawyer with the clerk of the supreme court,
21 who upon a showing of due diligence must accept service on
22 behalf of the lawyer;

23 (F) sending it by electronic means if the lawyer consented in writing, in
24 which event service is complete upon transmission, but is not effective
25 if the serving person learns that it did not reach the lawyer to be served;
26 or

27 (G) delivering it by any other means that the person consented to in
28 writing.

29 (ii) After a petition for discipline, service may be made upon the lawyer by:

30 (A) any of the methods of service addressed within subparagraph (B)(2)(b)(i);
31 or,

32 (B) electronically sending it to the e-mail address posted on the North Dakota

1 Supreme Court website. Electronic service otherwise must be consistent with
2 the procedure defined in N.D.R.Ct. 3.5(e), with the exception that the filings
3 and service will not be conducted through the Odyssey® system.

4 (c) Proof of service under this rule is made as provided in N.D.R.Civ.P. 4 or by an
5 attorney's certificate showing that service was made as required by these rules.