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*Joint Committee on Attorney Standards*

North Dakota Supreme Court  
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**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: Practice by Foreign Lawyers - Proposed Amendments

Dear Chief Justice VandeWalle:

The Joint Committee on Attorney Standards recently recommended to the Supreme Court, after review and approval by the Board of Governors, numerous amendments to the Rules of Professional Conduct. In general, the proposed amendments were adopted by the Supreme Court effective March 1. These amendments were the result of the Joint Committee's review of various reports of the ABA Commission on Ethics 20/20. The Commission focused on broadly described issues related to globalization and technology and the impact of each on the practice of law and regulation of lawyers.

Among the many amendments and new rules recommended by the ABA Commission were those directed at issues of globalization, including the practice authority of foreign lawyers in the United States. Principally, the Commission recommended amendments to Model Rule 5.5 of the Rules of Professional Conduct and the Model Rule for Registration of In-House Counsel, and also recommended adoption of the Model Rule on Pro Hac Vice Admission. These amendments and the model rule contained new language to establish a rule regime for the admission and practice of foreign lawyers within the state. The Joint Committee reviewed the various Ethics 20/20 reports and rule amendments and model rules. The Committee also reviewed current Rule 4 of the North Dakota Admission to Practice Rules, which governs the licensing and practice of foreign legal consultants. Information received by the Committee indicated that the Rule 4 process had rarely been used. The Committee ultimately concluded that it was unnecessary at the time to recommend amendments to North Dakota rules to address the foreign lawyer issue. Consequently, the Committee did not include any recommended amendments related to practice by foreign lawyers in its report to the Supreme Court.

Following consideration of the Joint Committee's report, the Supreme Court re-referred issues related to practice by foreign lawyers to the Committee for further review. At its February 26 meeting, you met with the Committee and summarized two principal areas of concern with respect to practice by foreign lawyers in the state: 1) that foreign lawyers may be providing legal services in the state without there being some form of registration process to ensure the presence is known, and 2) more importantly, the impact on North Dakota lawyers who may provide legal services in a foreign jurisdiction and there is no reciprocity because North Dakota does not recognize practice by lawyers from the foreign jurisdiction. The Joint Committee also reviewed additional background

information, including a resolution by the Conference of Chief Justices encouraging adoption of rule provisions related to practice by foreign lawyers, foreign trade data, and further explanations regarding the importance of admitting foreign trained lawyers.

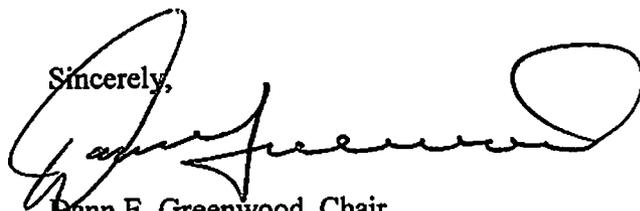
In response to the additional information, at its April 29 meeting the Joint Committee considered draft amendments to Rule 5.5 of the Rules of Professional Conduct, which governs multijurisdictional practice and the unauthorized practice of law, and to Rule 3A and B of the Admission to Practice Rules, which govern pro hac vice admission and the registration of in-house counsel. The Joint Committee agreed that the draft amendments should incorporate to the extent possible the Ethics 20/20 rule amendments related to foreign lawyers. Following its review of the drafts, the Joint Committee recommends the following amendments:

- Amendments to Rule 5.5 of the Rules of Professional Conduct to incorporate in paragraph (c)(2) ABA model rule language authorizing the provision of legal services by a foreign lawyer, with the limitation that any advice provided by the foreign lawyer must be based on the advice of a North Dakota licensed lawyer; to incorporate, as new paragraph (f), the model rule description of "foreign lawyer"; and to incorporate model rule explanatory language in Comment [9].
- Amendments to Rule 3 of the Admission to Practice Rules to incorporate, as new Section B, the model rule provisions governing pro hac vice admission of foreign lawyers. Amendments to current Section B, recast as new Section C, to incorporate relevant model rule provisions related to the registration of foreign lawyers as in-house counsel. New Section D would be added to provide the model rule definition of "foreign lawyer". Technical amendments to the Explanatory Note are also included.

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](mailto: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 5.5, ND RULES OF PROFESSIONAL CONDUCT - PROPOSED AMENDMENTS — FOREIGN LAWYERS: paragraph (c), new paragraph (f), and Comment [9]**

1 RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

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

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

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

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

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

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

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

23 (c) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction but  
24 not in this jurisdiction, who establishes an office or whose presence for performing legal services  
25 is other than temporary in this jurisdiction does not engage in the unauthorized practice of law in this

1 jurisdiction when:

2 (1) the lawyer who is an employee of a client, acts on the client's behalf, or on behalf of the client's  
3 commonly owned affiliates, and the lawyer is eligible for and has complied with the lawyer  
4 registration rules under Admission to Practice R. 3; and when the lawyer is a foreign lawyer and the  
5 services require advice on the law of this or another U.S. jurisdiction or of the United States,  
6 provided that the advice must be based upon the advice of a lawyer who is duly licensed and  
7 authorized by this jurisdiction to provide the advice, or

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

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

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

15 (f) For purposes of paragraph ( c), the foreign lawyer must be a member in good standing of a  
16 recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice  
17 as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline  
18 by a duly constituted professional body or a public authority.

19 Comment

20 [1] Paragraph (a) states the general rule that each state judiciary may regulate the legal profession  
21 within the borders of the jurisdiction. A lawyer may regularly practice law only in a jurisdiction in  
22 which the lawyer is admitted to practice. The practice of law in violation of lawyer-licensing  
23 standards of another jurisdiction constitutes a violation of these Rules. This Rule does not restrict  
24 the ability of lawyers authorized by federal statute or other federal law to represent the interests of  
25 the United States or other persons in any jurisdiction.

26 [2] There are occasions when out-of state lawyers perform services in this state on a temporary basis  
27 under circumstances that do not create a significant risk of harm to clients, the courts, or the public.  
28 Paragraph (b) identifies five situations in which the out-of-state lawyer may perform services in this

1 state without fear of violating this Rule. By creating these five specific "safe harbors" for  
2 multijurisdictional practice, this Rule does not address the question of whether other conduct  
3 constitutes the unauthorized practice of law. The fact that conduct is not specifically included or  
4 described in this Rule is not intended to imply that such conduct is the unauthorized practice of law.  
5 Nothing in this Rule is intended to authorize a lawyer to establish an office or presence other than  
6 temporary for performing legal services in this jurisdiction without being admitted to practice here.  
7 In addition, nothing in this Rule is intended to authorize an out-of-state lawyer to solicit clients in  
8 this jurisdiction.

9 [3] Paragraph (b)(1) permits in-house corporate counsel and governmental lawyers to represent their  
10 employers and their employers' commonly-owned affiliates on a temporary basis without being  
11 admitted to the bar of this state. The safe harbor in this rule does not cover appearances in court or  
12 other work for which pro hac vice admission or registration is required under Admission to Practice  
13 R.3.

14 [4] Paragraph (b) (2) is intended to provide broad protection to several kinds of work in this  
15 jurisdiction that are related to the lawyer's work in the lawyer's home state, such as negotiations,  
16 contracts, depositions and other forms of discovery, witness interviews, and meetings with clients  
17 or other parties to a transaction. The Rule recognizes that it should be sufficient to rely on the  
18 lawyer's jurisdiction of licensure as the jurisdiction with the primary responsibility to ensure the  
19 lawyer has the requisite character and fitness to practice law. Also, the Rule recognizes that a client  
20 should be able to have a single lawyer conduct all aspects of a transaction, even if the lawyer must  
21 travel to other states. The safe harbor in this paragraph, however, does not cover transactions that  
22 are pending in or substantially related to this state. For these state-related transactions, the  
23 out-of-state lawyer is required to seek admission or to associate with a licensed North Dakota lawyer  
24 as co-counsel in the representation of the client in the transaction. See paragraph (b)(4).

25 [5] Paragraph (b)(3) requires out-of-state lawyers to be admitted pro hac vice under Admission to  
26 Practice R.3 to appear in all matters pending in a tribunal or administrative agency in this state. This  
27 Rule provides a temporary safe harbor to a lawyer acting on a client's behalf in preparatory matters  
28 before pro hac vice admission, so long as the lawyer reasonably expects to be so admitted. Such  
29 preparatory work might include factual investigations and discovery in connection with litigation or  
30 an administrative proceeding where the lawyer reasonably expects to be admitted pro hac vice.

31 [6] Paragraph (b)(4) requires the out-of-state lawyer to associate with a duly licensed local lawyer  
32 for all transactions that are pending in or substantially related to this jurisdiction and for which pro

1 hac vice admission is not available. The Rule recognizes that association with a lawyer licensed in  
2 this jurisdiction is likely to protect the interests of both clients and the public. The local lawyer may  
3 not serve merely as a conduit for the out-of state lawyer, but must actively participate in and share  
4 actual responsibility for the representation of the client in the matter. If the licensed lawyer's  
5 involvement is merely pro forma, then both lawyers are subject to discipline under this Rule.

6 [7] Paragraph (b)(5) allows an out-of-state lawyer to perform services that a person who is not a  
7 lawyer may perform without a law license or other authorization from a federal, state, or local  
8 governmental body, e.g., in private alternative dispute resolution contexts, a non-lawyer may serve  
9 as a mediator or arbitrator. In some administrative proceedings, a non-lawyer is permitted by law to  
10 appear on behalf of a party. The Rule assumes that the public is adequately protected in these  
11 instances by the over-arching provisions of Rule 8.5, which subjects all lawyers performing any  
12 services in this jurisdiction to the Rules of Professional Conduct. If, for example, an out-of-state  
13 lawyer performing as a neutral engages in conduct in violation of these Rules, the lawyer could be  
14 disciplined for the misconduct, even if serving as the neutral was not the unauthorized practice of  
15 law under this Rule. It should be noted that whereas an out-of-state lawyer who represents a client  
16 in ADR proceedings pending in another jurisdiction would be covered by the safe harbor in this  
17 Rule, an out-of-state lawyer who represents a client in an ADR proceeding in North Dakota must  
18 register under Admission to Practice R.3. See paragraph (b)(3).

19 [8] Paragraph (c) creates two categories of allowable multijurisdictional practice for out-of state  
20 lawyers who establish an office or other permanent presence in the state: 1) in-house counsel who  
21 comply with registration rules, and 2) lawyers performing services pursuant to federal or state law  
22 or court rule.

23 [9] Paragraph (c)(1) creates a safe harbor for in-house corporate counsel or other employed lawyers  
24 who establish an office or other permanent presence in the state, provided they comply with the  
25 registration rules under Admission to Practice R.3. If the out-of state lawyer is not eligible for  
26 registration under Rule 3, this safe harbor would not apply and the lawyer must seek licensure in this  
27 jurisdiction. Paragraph (c)(1) also creates a safe harbor when legal services are performed by a  
28 foreign lawyer and require advice on the law of other jurisdictions. To decrease any risk to the client,  
29 when advising on the domestic law of a United States jurisdiction or on the law of the United States,  
30 a foreign lawyer authorized to provide legal services under paragraph (c)(1) must base the advice  
31 on the advice of a lawyer licensed in this jurisdiction.

32 [10] Paragraph (c) (2) permits out-of-state-lawyers to provide legal services in this state when

1 authorized to do so by federal law or state law or court rule.

2 [11] Lawyers who are not licensed to practice law in this jurisdiction must not represent or hold  
3 themselves out to the public as licensed to practice law in this jurisdiction. Paragraph (d) requires  
4 out-of-state lawyers practicing law in North Dakota under one of the safe harbors in paragraphs (b)  
5 and (c) to disclose in writing to their clients that they are not licensed in this state.

6 [12] Limiting the practice of law to members of the bar protects the public from unqualified persons  
7 performing legal services. Paragraph (e) does not prohibit a lawyer from employing the services of  
8 paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated  
9 work and retains responsibility for it. See Rule 5.3. Lawyers may also provide professional advice  
10 and instruction to nonlawyers whose employment requires knowledge of law; for example, claims  
11 adjusters, employees of financial or commercial institutions, social workers, accountants and  
12 employees of government agencies. Lawyers may assist independent nonlawyers authorized by law  
13 to provide particular legal services, for example, paraprofessionals authorized to provide some kinds  
14 of legal services. In addition, a lawyer may counsel nonlawyers who wish to represent themselves.

15 [13] Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that  
16 has been affected by a major disaster, but in which they are not otherwise authorized to practice law,  
17 as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another  
18 jurisdiction, but in which they are not otherwise authorized to practice law, should consult  
19 Admission to Practice R. 3.2.

20 Amended effective 03/01/05, 08/01/06, 05/01/12, 03/01/16

21 Reference: Minutes of the Professional Conduct Subcommittee of the Attorney Standards Committee  
22 on 11/08/85 and 01/31/86; Minutes of the Joint Committee on Attorney Standards on 06/24/03,  
23 09/25/03, 11/14/03, 04/16/04, 08/06/04, 09/16/11, 12/09/11, 09/13/13, 12/06/13, 09/12/14; 02/26/16;  
24 04/29/16.

**RULE 3, ND ADMISSION TO PRACTICE RULES - PROPOSED AMENDMENTS — FOREIGN LAWYERS: PRO HAC VICE ADMISSION [See Amended Section A, new Section B], REGISTRATION [See Amended Section C], new Section D, and EXPLANATORY NOTE**

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

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

6 1. Filing Requirements.

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

9 (1) designates an associate lawyer admitted and licensed to practice law in this state;

10 (2) files a motion requesting permission to appear and an affidavit in support of the motion  
11 with the clerk of the trial court, the hearing officer of the administrative agency matter, or the  
12 presiding officer of the tribunal;

13 (3) files a copy of the motion and affidavit with the State Board of Law Examiners at the  
14 same time they are filed with the appropriate individual identified in Section A(1)(a)(2);

15 (4) remits to the State Board of Law Examiners the fee required for an lawyer who has been  
16 licensed in this state for five years or more or certifies the lawyer has paid the fee to the State  
17 Board of Law Examiners during that calendar year; and

18 (5) obtains permission from the court, hearing officer, or presiding officer.

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

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

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

- 1 (3) whether the lawyer is under any restriction or probation in the practice of law in any
- 2 jurisdiction in which the lawyer is licensed;
- 3 (4) whether the lawyer is now or has ever been suspended or disbarred from a court in any
- 4 jurisdiction;
- 5 (5) the number of North Dakota actions in which the nonresident lawyer has appeared during
- 6 the prior three years, and whether the lawyer has ever registered under this rule;
- 7 (6) the address, telephone number and e-mail address for the lawyer; and
- 8 (7) that the required fee has been remitted to the State Board of Law Examiners.

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

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

15 4. Frequency of Motions. Separate permission is required for each action in which a nonresident  
16 lawyer appears in a North Dakota state court proceeding, before an administrative agency, or before  
17 another tribunal in the state.

18 5. Appeal.

- 19 (a) If an lawyer desires to appear in a proceeding before a North Dakota appellate court, and
- 20 the lawyer obtained permission to appear in a proceeding involving the same action in a
- 21 North Dakota state trial court, administrative agency, or tribunal, the lawyer only needs to
- 22 file an updated affidavit with the Clerk of the Supreme Court. An additional filing fee is not
- 23 required to be remitted to the State Board of Law Examiners, unless it is a new calendar year.
- 24 (b) If an lawyer desires to appear in a proceeding before a North Dakota appellate court, and
- 25 the lawyer did not obtain permission to appear in a proceeding involving the same action in

1 a North Dakota state trial court, administrative agency, or tribunal, the lawyer shall file a  
2 motion and affidavit with the Clerk of the Supreme Court requesting permission to appear.  
3 The motion, affidavit, and fee must be submitted as otherwise provided in Section A(1).

#### 4 B. Pro Hac Vice Admission - Foreign Lawyers

5 1. Except as otherwise provided in this Section, a foreign lawyer seeking to appear as  
6 counsel in an action in a trial court of this state or before an administrative agency or tribunal in this  
7 state must comply with the provisions of Section A. A foreign lawyer is a person admitted in a  
8 non-United States jurisdiction and who is a member of a recognized legal profession in that  
9 jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the  
10 equivalent and are subject to effective regulation and discipline by a duly constituted professional  
11 body or a public authority, and who is not disbarred, suspended or the equivalent thereof from  
12 practice in any jurisdiction.

13 2. A court, agency, or tribunal in this state may permit a foreign lawyer to appear with  
14 an associate lawyer in a particular proceeding pending before the court, agency, or tribunal in  
15 a defined role as a lawyer, advisor or consultant in that proceeding, provided that the associate  
16 lawyer is responsible to the client, responsible for the conduct of the proceeding, responsible  
17 for independently advising the client on the substantive law of a United States jurisdiction  
18 and procedural issues in the proceeding, and for advising the client whether the associate  
19 lawyer's judgment differs from that of the foreign lawyer.

20 3. In determining whether to permit a foreign lawyer to appear in a proceeding as a lawyer,  
21 advisor, or consultant, or in an advisory or consultative role, the court, hearing officer, or presiding  
22 officer shall consider any factors relating to the lawyer's possible appearance, including:

23

24 a. the legal training and experience of the foreign lawyer, including in matters similar  
25 to the matter before the court or agency;

1 b. the extent to which the matter will include the application of the law of the jurisdiction  
2 in which the foreign lawyer is admitted or international law or other law with which the  
3 foreign lawyer has a demonstrated expertise;

4 c. the foreign lawyer's familiarity with the law of a United States jurisdiction  
5 applicable to the matter before the court or agency;

6 d. the extent to which the foreign lawyer's relationship and familiarity with the client  
7 or with the facts and circumstances of the matter will facilitate the fair and efficient  
8 resolution of the matter;

9 e. the foreign lawyer's English language ability; and

10 f. the extent to which it is possible to define the scope of the foreign lawyer's  
11 authority in the matter so as to facilitate its fair and efficient resolution, including  
12 by a limitation on the foreign lawyer's authority to advise the client on the law  
13 of a United States jurisdiction except in consultation with the associate lawyer.

14 4. The court, agency, or tribunal may limit the activities of the foreign lawyer or require  
15 further action by the associate lawyer, as appropriate, in light of considerations under paragraph 3.  
16 It may, for example, require the associate lawyer to sign all pleadings and other documents  
17 submitted to the court or to other parties or to be present at all depositions and conferences among  
18 counsel.

19  
20 **B: C. Registration.** A nonresident lawyer must register under this section if the lawyer represents a  
21 client in an alternative dispute resolution process in this state or is employed in North Dakota as  
22 in-house counsel exclusively for a corporation or its subsidiaries or affiliates, an association, or a  
23 business whose lawful activities are other than the practice of law or the provision of legal services.  
24 The lawyer must be admitted and licensed to practice law in another state or, the District of  
25 Columbia, or a foreign jurisdiction, but not licensed in North Dakota, and, except for the time  
26 requirements in Rule 7A, must be otherwise qualified for admission to the practice of law in this  
27 state.

1 1. Registration Requirements. An lawyer must file with the State Board of Law Examiners the  
2 following:

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

6 (1) the jurisdictions in which the lawyer is admitted to practice law and the number  
7 of years of admission, including, in addition, if the lawyer is a foreign lawyer,  
8 documents proving admission to practice law and current good standing in the  
9 foreign jurisdiction. If the documents are not in English, the lawyer shall submit with  
10 the affidavit an English translation and satisfactory proof of the accuracy of the  
11 translation;

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

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

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

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

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

24

25 b. With respect to an lawyer registering as in-house counsel, an affidavit from an officer,  
26 director or general counsel of the lawyer's employer in this state attesting that the registrant is

1 employed as an lawyer exclusively for the employer, that the registrant is an individual of good  
2 moral character, and that the nature of the employment qualifies the lawyer for registration under this  
3 rule. With respect to an lawyer registering to represent a client in an alternative dispute resolution  
4 process, a letter from the disciplinary authority in each jurisdiction in which the lawyer is admitted  
5 indicating the lawyer is in good standing in the jurisdiction.

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

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

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

14 4. Limitation on Registration. A nonresident lawyer may provide legal services under this rule for  
15 5 years or until the lawyer becomes eligible for admission based on practice as provided by Rule 7A,  
16 whichever is earlier. After that time, the lawyer must apply for and be admitted to the practice of law  
17 in North Dakota to provide any legal services in this state.

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

22 6. Pro Hac Vice Admission Separate. If a nonresident lawyer registered as in-house counsel under  
23 this section desires to appear, either in person, by signing pleadings, or by being designated as

1 counsel in actions filed in courts, administrative agencies, or other tribunals in this state, a separate  
2 motion for pro hac vice admission is required under this rule. However, a separate fee is not required,  
3 provided in-house counsel has registered under this rule.

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

7 D. For purposes of this Rule, a “foreign lawyer” is a member in good standing of a recognized legal  
8 profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or  
9 counselors at law or the equivalent and are subject to effective regulation and discipline by a duly  
10 constituted professional body or a public authority.

11 ~~D.~~ E. Use of Fees. Fees collected by the State Board of Law Examiners under this rule must be  
12 distributed in the manner provided for the distribution of license fees under N.D.C.C. Section  
13 27-12-04.

#### 14 EXPLANATORY NOTE

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

19 Subparagraph 3(A)(1)(b) was amended, effective January 1, 2013, to add a requirement that the  
20 nonresident lawyer's affidavit contain a statement that the required fee has been remitted to the State  
21 Board of Law Examiners.

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

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

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

9 New Section B was adopted, effective \_\_\_\_\_, to provide procedures for pro hac vice  
10 admissionof foreign lawyers.

11 Section B was amended and adopted as Section C, effective \_\_\_\_\_, to include registration  
12 provisions applicable to foreign lawyers.

13 New Section D was adopted, effective \_\_\_\_\_, to provide a definition related to pro hac vice  
14 admission and registration of foreign lawyers.

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

17 SOURCES: Joint Procedure Committee Minutes of May 6-7, 1999, pages 2-7; January 28-29, 1999,  
18 pages 13-16; November 7-8, 1991, page 6; October 25-26, 1990, page 19; June 21, 1984, pages 1-2  
19 Joint Committee on Attorney Standards Minutes of June 24, 2003, pgs. 5-8; September 25, 2003,  
20 pgs. 2-8; November 14, 2003, pgs. 2-6; February 27, 2004, pgs. 3-5; and April 16, 2004, pgs. 1-6;  
21 June 13, 2012, pg.11; February 26, 2016; April 29, 2016.

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

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

2 [Amended effective March 1, 2000; amended effective March 1, 2005; amended effective January

3 1, 2013; amended effective April 1, 2013.]