

North Dakota Supreme Court
Joint Committee on Attorney Standards

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IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JUNE 30, 2014
STATE OF NORTH DAKOTA

Hon. Michael G. Sturdevant, Chair
314 W. 5th ST., Suite 12
Bottineau, ND 58318-1200
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June 30, 2014

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

Re: Rule 2 - Admission to Practice Rules - Proposed Amendments

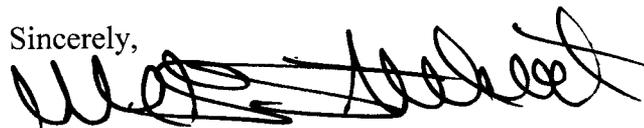
Dear Chief Justice Vandewalle:

Following a referral from the Supreme Court, the Joint Committee on Attorney Standards has reviewed proposed rule amendments submitted by the Lawyer Assistance Committee. The Committee previously submitted proposed amendments to Administrative Rule 49, which would enable UND law student access to the lawyer assistance program established under the rule, to the Supreme Court for consideration. The amendments were adopted effective June 1. Additional, related amendments to Rule 2B of the Admission to Practice Rules were proposed by the Lawyer Assistance Committee and would address how the Board of Law Examiners could respond to a bar admission application who, as a law school student, sought LAP services. As with the AR 49 amendments, the Committee was assisted in its review and discussion of the Rule 2B amendments by the participation of John Olson, Chair of the Lawyer Assistance Committee, and Board of Law Examiners member Lawrence King.

The proposed amendments to Rule 2B of the Admission to Practice Rules would generally preclude the Board of Law Examiners from adversely considering a student's participation in the LAP when reviewing the student's subsequent application for admission to the bar. That limitation, however, would not apply if the student failed to complete a treatment program designed by the LAP. Successful completion of the program would be considered in a favorable light. Following its consideration of the proposed amendments, the Committee concluded that the proposed amendments to Rule 2B, with slight modifications, would be a beneficial addition to the rule. The amendments would support the purpose intended to be served by permitting student access to LAP services for assistance with mental health or substance abuse issues that may affect the individual's performance and success as a student and later as a lawyer.

The Committee approved the proposed amendments for submission to the Supreme Court pending review and comment by the SBAND Board of Governors, as required under Administrative Rule 38, Section 2B. The Board of Governors has reviewed the amendments and voted to support adoption of the amendments. I am pleased, therefore, to submit the proposed amendments to the Supreme Court for its consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Sturdevant", written over a horizontal line.

Michael G. Sturdevant, Chair
Joint Committee on Attorney Standards

MGS/

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

RULE 2, ADMISSION TO PRACTICE RULES - PROPOSED AMENDMENTS

Rule 2. Standards for Admission

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

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

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

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

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

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

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

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

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

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

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

20 B. Character and Fitness Standards and Investigation

21 1. The applicant shall have the burden of proving that the applicant possesses good moral
22 character and fitness to practice law.

23 a. The Board shall determine whether an applicant's moral character is such as
24 permits a positive recommendation when the applicant's record of conduct

1 indicates that the applicant is presently honest, trustworthy, diligent, and reliable.

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

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

12 (1) unlawful conduct;

13 (2) academic misconduct;

14 (3) making false statements;

15 (4) misconduct in employment;

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

17 (6) abuse of legal process;

18 (7) neglect of financial responsibilities;

19 (8) neglect of professional obligations;

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

21 (10) evidence of mental or emotional instability;

22 (11) evidence of drug or alcohol dependency;

23 (12) denial of admission to the bar in another jurisdiction;

24 (13) disciplinary action by a lawyer disciplinary agency or other
25 professional agency of any jurisdiction.

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

- 5 (1) the applicant's age at the time of the conduct;
- 6 (2) the recentness of the conduct;
- 7 (3) the reliability of the information concerning the conduct;
- 8 (4) the seriousness of the conduct;
- 9 (5) the factors underlying the conduct;
- 10 (6) the cumulative effect of conduct or information;
- 11 (7) the evidence of rehabilitation;
- 12 (8) the applicant's positive social contributions since the conduct;
- 13 (9) the applicant's candor in the admissions process;
- 14 (10) the materiality of any omissions or misrepresentations.

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

19 3. At any stage of the registration or application proceedings, the Board may request the
20 applicant to appear before it or a designated Board member to answer any questions.

21 4. Seeking counsel from the State Bar Association of North Dakota Lawyer Assistance
22 Program (LAP) for mental health or substance abuse problems that might affect law
23 practice administration or compromise professional competence may not be considered
24 adversely by the Board in its evaluation. If the applicant chooses to participate in a
25 program designed for the applicant by LAP and successfully completes that program by
26 the time of graduation, the evidence of such rehabilitation and recovery may be

1 considered favorably by the Board when evaluating the applicant's character and fitness.
2 The applicant's failure to complete a treatment program may be considered adversely by
3 the Board.

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

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

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

22 2.The Character and Fitness Committee shall investigate issues concerning the moral
23 character and fitness qualifications of a registrant or an applicant for admission upon the
24 request of the Board. Upon receipt of such referral, accompanied by all information
25 regarding the registrant or applicant as obtained by the Board, the Character and Fitness
26 Committee shall review the information and conduct such additional investigation as it
27 deems necessary to make its report to the Board. The Committee shall conduct a personal
28 interview with the registrant or applicant regarding the issues referred by the Board.

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

1 a. The provisions of this Rule; and

2 b. The applicable decisions of the Supreme Court of North Dakota and the
3 Supreme Court of the United States.

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

8 E. Reapplication and Rehabilitation. Any applicant who receives a negative recommendation for
9 admission based on the lack of moral character and/or fitness that has been accepted by the
10 Supreme Court, may reapply for admission by filing a new application two years after the date of
11 the Board's negative recommendation or such other period as may be set by the Board or the
12 Court. The applicant shall produce clear and convincing evidence of the applicant's rehabilitation
13 and present moral character and fitness to practice law.

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