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State of North Dakota

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October 6, 1999

RECEIVED BY
Chief Justice
Supreme Court

OCT 08 1999

STATE OF
NORTH DAKOTA

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

Re: Proposed Amendments to Rule 11.1, North Dakota Rules of Court

Dear Chief Justice VandeWalle:

The Bar Board requested that Rule 11.1, North Dakota Rules of Court, be reviewed and modified because the rule as presently implemented is so vague and open-ended that non-resident lawyers can regularly practice in our state without being licensed and without any investigation into their character and fitness to practice. The Bar Board is in agreement with the majority of the amendments suggested by the Joint Procedures Committee. However the Bar Board is concerned about certain aspects of the proposed amendments to Rule 11.1 and, accordingly, offers the following comments for the Court's consideration.

1. **COMMENT ON APPLICABILITY OF RULE TO RESIDENT LAWYERS:**

The current Rule applies only to non-resident lawyers. The change of the Rule to make this procedure available to resident attorneys, not licensed in North Dakota, is inconsistent with the intent of the current rule or the Bar Board's requested revisions to the Rule. In the Bar Board's view, resident attorneys who are not licensed in North Dakota, yet want to practice law in North Dakota, should be required to obtain a license. The intent of the rule is to make the Court accessible to non-resident lawyers who have infrequent contact with our State Courts. It is an accommodation to a licensed lawyer in another jurisdiction. A lawyer who resides in North Dakota and wants access to our Courts for the purpose of practicing law should be required to obtain a license and undergo the appropriate character and fitness investigation.

RECOMMENDATION:

The Bar Board would recommend the following revisions to the proposed rule:

*The title of Rule 11.1 should retain the current title: "Nonresident Attorneys"

*Rule 11.1, subsection (a)(1), first line should be revised to read as follows: "A nonresident attorney admitted and licensed to practice law"

*The Explanatory Notes should be revised to clearly state that the procedure provided under the Rule is only applicable to nonresident lawyers who are licensed in another jurisdiction.

2. **COMMENT ON THE "OCCASIONALLY" STANDARD:**

The reference to "occasionally" in subsection (a)(1) is too vague. Such a vague standard will result in the rule not being enforced or, enforced inconsistently. The standard should be clear and something that can be enforced by the State's trial courts. The Bar Board is of the view that a specific number of appearances should be established per calendar year. If the attorney appears in more cases than permitted under the Rule, the attorney should then be required to obtain a license before appearing in another case. Establishing a specific number of cases per calendar year would result in the following:

*Non resident attorneys will have a clear articulated standard, without going to the trial court, as to when a license must be obtained.

*An established limit on the number of cases per calendar year will allow attorneys to determine whether they must obtain a license before the attorney agrees to represent the client, rather than waiting for the trial court to approve or deny the request to be allowed to appear in the case. The difficulty with the word "occasionally" is that if the trial court decides that the lawyer should not be permitted to appear under Rule 11.1, the lawyer's option is to withdraw from the case or apply for licensure. In either event, there may be a negative result for the client, that is, the need to get a new lawyer or the delay associated with the attorney getting the license while the case is pending.

Any limit on the number of appearances should be clear so that the State's trial courts and the attorneys know when licensure vs. application under Rule 11.1 should be the route taken.

RECOMMENDATION:

The Bar Board would recommend the following revisions to the proposed Rule:

*Subsection (a)(1) should be revised by deleting the word "occasionally".

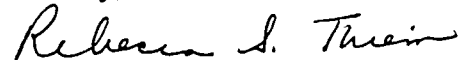
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*Subsection (d) should be revised to read as follows:

(d). Frequency of Appearances. A separate order granting permission is required for each action in which the attorney appears in a North Dakota state court proceeding. The procedure available under this Rule shall only be available to nonresident attorneys who appear in no more than 3 proceedings in a trial court in the calendar year. Nonresident attorneys who want to appear in 4 or more proceedings in a trial court in a calendar year must obtain a license to practice law in North Dakota.

Thank you for permitting the Bar Board to comment on the proposed amendments to Rule 11.1.

Sincerely,



Rebecca S. Thiem
President
State Bar Board

RT:pm

pc: Justice William A. Neumann
Justice Dale V. Sandstrom
Justice Mary Muehlen Maring
Justice Carol Ronning Kapsner