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February 27, 2006

Penney Miller
Clerk of the Supreme Court
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FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

FEB 27 2006

STATE OF NORTH DAKOTA

RE: Proposed N.D.R.O.C. 10.2

Dear Ms. Miller:

The North Dakota Bankers Association ("NDBA") would like to thank the Court for this opportunity to comment on proposed N.D.R.Ct. 10.2. NDBA is a statewide trade association for banks and thrift associations. Our 93 members are national banks, state banks and federal savings banks. Our members serve the financial needs of North Dakotans from more than 300 offices throughout the state.

Over the past few years (long before the Wetzel decision), some NDBA member banks have suggested NDBA sponsorship of legislation to allow banks to represent themselves in small claims court because the judges in their districts will not permit them to do so. Other NDBA members have stated that in their judicial districts banks are allowed to represent themselves in small claims court actions. So far as we can tell, the difference is due to judges' contrary interpretations of what constitutes the unauthorized practice of law, rather than any requirement in N.D.C.C. Ch. 27-08.1. The small claims court was established to provide North Dakotans with a forum to resolve a limited class of small disputes without undue formality or expense. N.D.C.C. §§ 27-08.1-01(1) and 27-08.1-03. The small claims court statutes themselves recognize the parties will be both natural person and entities, including business entities and political subdivisions, and do not distinguish between them. In small claims court, the parties are to be permitted to "appear without counsel". N.D.C.C. § 27-08.1-03.

By adopting proposed N.D.R.Ct. 10.2, with some modifications, the Supreme Court will be exercising its jurisdiction over the practice of law in a manner that clear ups the uncertainty about whether banks and other entities may appear in small claims court without counsel and appropriately support the small claims court process and purpose, without endorsing the unauthorized legal representation by persons who are not licensed attorneys and without overburdening the small claims court system. **Accordingly, NDBA heartily endorses the provision within the Rules of Court of clear authority and guidelines for business entities to represent themselves in small claims court.**

The right of a small claims court party to self-representation is essential to the purposes of the small claims court law. All proposed North Dakota Rule of Court 10.2 is intended to do is to recognize that entities must do their business through individuals and to designate individuals who are appropriate to appear in small claims court on behalf of an entity . We agree that the list

should include a party's "officer[s], manager[s], partner[s], or authorized employee[s]" but propose an expansion of the list to include "directors", "governors" and "trustees", "officials" or "other appropriate individual". We suggest this change because we are concerned that the term "authorized agent" is overly broad and is likely to create a class of non-lawyers who hold themselves out as being available to be appointed as an "authorized agent" to represent entities in small claims court. This is not desirable.

We suggest that the rule includes an additional section regarding the characteristics that must be met for an individual to be an "other appropriate individual" within the meaning of the rule. These could include licensure as an attorney or alternately, other things, such as an ownership interest in the party, or requirement for the individual to have either personal knowledge of the disputed or be subject to a personal adverse effect depending upon the outcome of the proceeding. We would also include a provision to allow an individual who doesn't clearly meet the stated criteria to ask for court permission to appear on behalf of an entity and to support the request with information as to why that person is an appropriate individual within the rule. In our view "an appropriate individual" should be performing this service to the entity as part of his relationship to the entity and not for compensation in addition to or separate from regular compensation for services to the entity. We would also suggest that the entity which desires to be represented by an "other appropriate individual" and the individual be required to submit an affidavit of compliance with the requirements for that representation. These requirements would foster the concept of "self-representation" by entities while discouraging representation by a disinterested non-attorney who is retained for the matter.

North Dakota is a state of small banks and other small business which are formed as an entity for reasons that have nothing to do with limiting "personal" liability. Many, if not most, do not have resources that are substantially greater than those of a reasonably successful sole proprietor. If this rule is adopted, it will be of greater benefit to small banks and other small entities because large banks and business entities already have counsel on retainer or on staff. Representation in small claims court by counsel is not particularly burdensome to them. The adoption of the rule should also enhance the small claims court process itself because it will encourage those individuals who have personal knowledge of the matter at hand to be the ones who appear and present the case to the court.. The rule change may also strengthen public confidence in the "fairness" of a small claims court proceeding because individuals will perceive the playing field as being more even if they are not facing a licensed attorney, but another "ordinary" person.

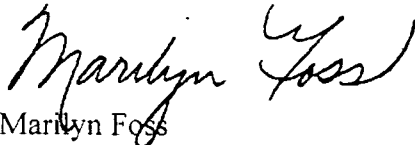
NDBA supports rules that have the effect of enhancing government services to the public in a cost effective manner. With changes to address legitimate concerns regarding the unauthorized practice of law, proposed 10.2 meets the test and should be adopted.

In closing, NDBA again thanks the Court for this opportunity to comment on proposed N.D.R.Ct. 10.2.

Sincerely Yours

Marilyn Foss
General Counsel

Sincerely,

A handwritten signature in black ink that reads "Marilyn Foss". The signature is written in a cursive style with a large initial "M" and a stylized "F".

Marilyn Foss
General Counsel