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MAR 21 2006

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March 20, 2006  
FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

MAR 21 2006

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Ms. Penny Miller  
State Board of Law Examiners  
600 East Boulevard Avenue, Dept. 180  
Bismarck, ND 58505-0530

STATE OF NORTH DAKOTA

MAR 21 2006

ND STATE BOARD  
OF LAW EXAMINERS

RE: Rule 10.2, North Dakota Rules of Court

Dear Penny:

At the regular meeting of the SBAND Board of Governors on March 18, 2006, the board voted unanimously to oppose proposed Rule 10.2 of the North Dakota Rules of Court.

The primary reason for the opposition is that Rule 10.2(b) would permit a non-lawyer agent to represent a business association or political subdivision in small claims court. One unintended result of the rule change would be to permit a non-lawyer to establish a business solely for the purpose of becoming a designated agent for many business associations or political subdivisions in small claims court actions.

There were additional concerns with Subsection (b), in that it attempts to list all legal entities, and the list is incomplete. Further, Subpart (b) refers to a sole proprietorship, which does not need to be included in the list because a sole proprietor would be authorized to appear on behalf of herself.

In order to address these concerns the Board would submit for consideration that the term "legal entity" be used, and that an appropriate definition for "legal entity" be included in the Rule. In coming up with the following definition, we referred to Black's Law Dictionary, Abridged (6th Ed.):

- (B) Legal Entity. A legal entity, as used in this Rule, is something other than a natural person who has sufficient existence in legal contemplation that it can function legally, be sued or sue, and make decisions through agents as in the case of corporations. A legal entity may be represented in a small claims court action by the following persons who have been authorized to act on its behalf:

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an officer, a person holding an ownership interest, a director or other member of the governing board, a trustee [or an employee].

There was substantial discussion as to whether an "authorized employee" should be allowed to appear on behalf of the legal entity. The consensus was that a billing clerk for a company who is familiar with the issues should be entitled to appear in small claims court because that would free up an officer of the corporation from having to attend the hearing. Conversely, if the Rule permits any employee to appear on behalf of the legal entity, there may be issues raised with respect to whether the employee was legally authorized to take a specific position on behalf of the corporation or whether the employee has sufficient knowledge with respect to the matter to appear on behalf of the legal entity.

In summary, the Board opposed the proposed Rule 10.2 in its present form. We believe that most of the problems can be addressed by adopting the definition of legal entity outlined herein. Finally, we submit for your consideration the issue of whether an employee should be authorized to appear on behalf of a legal entity and, if so, whether there should be any descriptors or limitations placed upon the term "employee."

Thank you for your consideration in this matter.

Sincerely,

MARING WILLIAMS LAW OFFICE, P.C.

A handwritten signature in blue ink, appearing to read "M. Williams", with a long horizontal flourish extending to the right.

Michael J. Williams

MJW:nw  
c: Bill Neumann