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State of North Dakota

JOINT PROCEDURE COMMITTEE

20060029

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SUPREME COURT
STATE CAPITOL
BISMARCK, NORTH DAKOTA 58505
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May 3, 2006

FILED
BY THE OFFICE OF THE
CLERK OF SUPREME COURT

MAY 3 2006

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

STATE OF NORTH DAKOTA

Re: Proposed New North Dakota Rule of Court 10.2
Supreme Court No. 20060029

Dear Chief Justice VandeWalle:

By letter dated April 12, 2006, the North Dakota Supreme Court instructed the Joint Procedure Committee to review the comments submitted on proposed North Dakota Rule of Court 10.2 and to report back to the Court.

The Committee reviewed the comments at its April 2006 meeting and offers the following amendments to the proposed rule:

— Add language to subdivision (a) of the proposal indicating that parties need only appear in person in a small claims court action when a hearing has been requested. This change is in response to the comments of Court Administrator Sally Holewa, who was concerned that parties in default matters would need to appear in person.

— Change language in subdivision (b) of the proposal to use the term “legal entity” instead of listing entities. This change is in response to the comments of the SBAND Board of Governors who indicated that the previous list was not inclusive enough.

— Add language to subdivision (b) more specifically listing the persons who can represent a legal entity in small claims court. This change is in response to comments by the SBAND Board of Governors and counsel for the North Dakota Banker’s Association who indicated that the previous list was not specific enough.

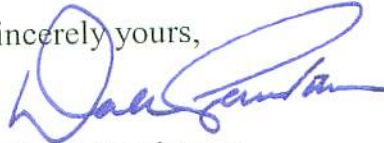
— Delete language allowing an agent to represent a legal entity in small claims court. This change was in response to several comments suggesting that allowing agents to act in

small claims court would be improper and create a risk of infringement on the practice of law.

— Add language to the explanatory note explaining the changes described above.

Thank you for allowing the Joint Procedure Committee to review the comments on proposed N.D.R.Ct. 10.2 and to submit this report to the Court. A copy of the Committee's new proposal, with changes incorporated, is attached.

Sincerely yours,



Dale V. Sandstrom
Chair, Joint Procedure Committee

DVS:kh
attachment

RULE 10.2 SMALL CLAIMS COURT

(a) Appearances. The parties to any action in which a hearing has been requested shall appear in person, unless otherwise authorized by the court, and may be represented by a lawyer admitted to practice law before the courts of this state.

(b) Legal Entities. 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:

- (1) an officer;
- (2) a person holding an ownership interest;
- (3) a director or other member of the governing board;
- (4) a trustee; or
- (5) an employee.

EXPLANATORY NOTE

Rule 10.2 was adopted, effective _____.

Subdivision (a) applies to actions in which a hearing has been requested. Under N.D.C.C. § 27-08.1-02, if the court has not received a request for hearing within 20 days of filing of the claim, the matter proceeds by default.

Subdivision (b) allows certain authorized persons to represent a legal entity in small claims court. A legal entity is a body, other than a natural person, that can function legally.

22 sue or be sued, and make decisions through authorized representatives. Examples of legal
23 entities are corporations, partnerships, limited liability companies, and political subdivisions.

24 Under N.D.C.C. § 27-08.1-01 (3), a claim may not be filed in small claims court by an
25 assignee of the claim, including owners or employees of collection agencies.

26 SOURCES: Joint Procedure Committee Minutes of April 27-28, 2006, pages _____;
27 January 26, 2006, pages 13-17.

28 STATUTES AFFECTED:

29 CONSIDERED: N.D.C.C. ch. 27-08.1.