

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

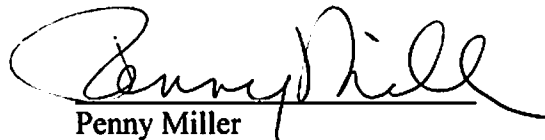
Supreme Court No. 20130379

**Proposed Amendments to North Dakota Administrative Rules 49 Regarding the
Lawyer Assistance Program and Admission to Practice Rules 2
Regarding Standards for Admission**

[¶1] On November 18, 2013, the Lawyer Assistance Committee forwarded proposed amendments to North Dakota Supreme Court Administrative Rules 49 regarding the lawyer assistance program and to North Dakota Supreme Court Admission to Practice Rules 2. On November 29, 2013, the Court referred the proposed amendments to the Joint Attorney Standards Committee. On April 7, 2014, the Joint Attorney Standards Committee submitted its suggested amendments to North Dakota Administrative Rules 49, noting amendments to North Dakota Admission to Practice Rules 2 would be forwarded at a later date. Amendments to North Dakota Supreme Court Administrative Rules 49 were adopted, effective June 1, 2014. On June 30, 2014, the Joint Attorney Standards Committee forwarded suggested amendments to North Dakota Supreme Court Admission to Practice Rules 2. The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

[¶2] IT IS HEREBY ORDERED, that amendments to North Dakota Admission to Practice Rules 2 are **ADOPTED**, effective October 1, 2014.

[¶3] The Supreme Court of the State of North Dakota convened this 1st day of July, 2014, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller
Clerk
North Dakota Supreme Court

Rule 2. Standards for Admission

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

1. The ability to be honest and candid with clients, lawyers, courts, the Board, and others;
2. The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
3. The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
4. The ability to use good judgment on behalf of clients and in conducting one's professional business;
5. The ability to conduct oneself with respect for and in accordance with the law;
6. The ability to avoid acts which exhibit disregard for the rights or welfare of others;
7. The ability to comply with the requirements of the North Dakota Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a Court or tribunal;
8. The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
9. The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
10. The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation

1. The applicant shall have the burden of proving that the applicant possesses good moral character and fitness to practice law.
 - a. The Board shall determine whether an applicant's moral character is such as permits a positive recommendation when the applicant's record of conduct indicates that the applicant is presently honest, trustworthy, diligent, and reliable.
 - b. The Board shall determine whether an applicant possesses the present fitness to carry out professional duties to clients, courts and the profession. Fitness involves the assessment of mental and emotional health as it affects the competence of a prospective lawyer. An applicant may be of good moral character, but may be incapacitated from proper discharge of the duties as an attorney by a mental or emotional illness or condition.

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

- (1) unlawful conduct;**
- (2) academic misconduct;**
- (3) making false statements;**
- (4) misconduct in employment;**
- (5) acts involving dishonesty, fraud, deceit or misrepresentation;**
- (6) abuse of legal process;**
- (7) neglect of financial responsibilities;**
- (8) neglect of professional obligations;**
- (9) violation of an order of a court;**
- (10) evidence of mental or emotional instability;**
- (11) evidence of drug or alcohol dependency;**
- (12) denial of admission to the bar in another jurisdiction;**
- (13) disciplinary action by a lawyer disciplinary agency or other professional agency of any jurisdiction.**

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

- (1) the applicant's age at the time of the conduct;**
- (2) the recentness of the conduct;**
- (3) the reliability of the information concerning the conduct;**
- (4) the seriousness of the conduct;**
- (5) the factors underlying the conduct;**
- (6) the cumulative effect of conduct or information;**
- (7) the evidence of rehabilitation;**

- (8) the applicant's positive social contributions since the conduct;
- (9) the applicant's candor in the admissions process;
- (10) the materiality of any omissions or misrepresentations.

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

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

4. Seeking counsel from the State Bar Association of North Dakota Lawyer Assistance Program (LAP) for mental health or substance abuse problems that might affect law practice administration or compromise professional competence may not be considered adversely by the Board in its evaluation. If the applicant chooses to participate in a program designed for the applicant by LAP and successfully completes that program by the time of graduation, the evidence of such rehabilitation and recovery may be considered favorably by the Board when evaluating the applicant's character and fitness. The applicant's failure to complete a treatment program may be considered adversely by the Board.

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

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

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

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

registrant or applicant regarding the issues referred by the Board.

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

- a. The provisions of this Rule; and
- b. The applicable decisions of the Supreme Court of North Dakota and the Supreme Court of the United States.

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

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

[Amended effective August 1, 2001; March 1, 2009; April 1, 2013; October 1, 2014.]