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IN THE OFFICE OF THE
CLERK OF SUPREME COURT

North Dakota Supreme Court
Joint Committee on Attorney Standards

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APR 07 2014

STATE OF NORTH DAKOTA

Hon. Michael G. Sturdevant, Chair
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RECEIVED BY
Chief Justice
Supreme Court

APR 07 2014

STATE OF
NORTH DAKOTA

April 2, 2014

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

Re: Administrative Rule 49 - Lawyer Assistance Program - Proposed Amendments

Dear Chief Justice VandeWalle:

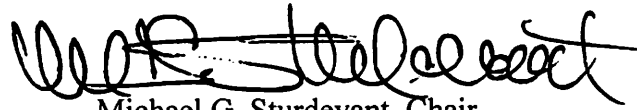
Following a referral from the Supreme Court, the Joint Committee on Attorney Standards reviewed proposed rule amendments submitted by the Lawyer Assistance Committee. The amendments are generally directed at law student access to the lawyer assistance program established under Administrative Rule 49. Proposed amendments to AR49 would identify students attending the University of North Dakota School of Law as being able to access program services. Additional proposed amendments to Rule 2B of the Admission to Practice Rules would address how the Board of Law Examiners could respond to a bar admission application who, as a law school student, sought LAP services. The Committee was assisted in its review and discussion by the participation of John Olson, Chair of the Lawyer Assistance Committee, and Board of Law Examiners member Lawrence King.

Following its review, the Joint Committee concluded the proposed amendments to Administrative Rule 49 to permit law school student access to LAP services would be a beneficial addition to the rule. As explained by Mr. Olson in his letter submitting the proposed amendments, the rule change would enable LAP services to address mental health or substance abuse issues among students, which will assist them in becoming functioning members of the legal community.

Administrative Rule 38, which governs the Committee, generally requires that the Committee submit any rule proposals to the SBAND Board of Governors for review and comment. However, the Committee was informed that the Board had previously reviewed the proposed amendments to Administrative Rule 49 and supported the amendments. The Committee has submitted the proposed amendments to Rule 2B of the Admission to Practice Rules, with minor changes, to the Board for review and comment as the Board had not previously considered the amendments. There was general agreement that the proposed amendments to Administrative Rule 49 could be submitted separately to the Supreme Court for consideration. Mr. Olson agreed with this conclusion.

I am pleased, therefore, to submit the attached proposed amendments to Administrative Rule 49 to the Supreme Court for its consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Sturdevant", written in a cursive style.

Michael G. Sturdevant, Chair
Joint Committee on Attorney
Standards

MGS/

cc: Penny Miller, Clerk of the Supreme Court
Jim Ganje

PROPOSED AMENDMENTS

*N.D. Sup. Ct. Admin. R. 49
Effective August 1, 2004*

LAWYER ASSISTANCE PROGRAM

Administrative Rule 49

1 Section 1. Purpose.

2 In furtherance of the Supreme Court's constitutional responsibility for the supervision of
3 lawyer conduct, this rule provides for the establishment of a mechanism to protect the public, assist
4 lawyers in the performance of their duties and responsibilities in the representation of clients, and to
5 maintain and improve the integrity of the legal profession.

6 Section 2. Lawyers Assistance Program — Establishment.

7 The State Bar Association of North Dakota may establish an assistance program for lawyers
8 and for students attending the University of North Dakota School of Law to aid in preventing and
9 alleviating problems that may adversely influence a lawyer's or student's performance.

10 Section 3. Lawyer Assistance Committee

11 A Lawyer Assistance Committee is established to oversee the operations of the lawyer
12 assistance program established pursuant to this rule. The Committee shall be comprised of three
13 members, including one lay member, appointed by the Board of Governors of the State Bar
14 Association and three members, including one lay member, appointed by the Chief Justice. Of the
15 members initially appointed and as determined by lot at the first meeting, two members will be
16 appointed for one year, two members will be appointed for two years, and two members will be
17 appointed for three years. Thereafter, each appointment is for a three year term. Each member is
18 eligible for reappointment, but may not serve more than two consecutive terms. Each member serves
19 until the member's successor is appointed. Each member is entitled to reimbursement by the
20 member's appointing authority for actual expenses incurred in the performance of committee duties.
21 The president of the State Bar Association, after consultation with the Chief Justice, shall appoint the
22 committee chair, whose term as chair shall not exceed two years.

23 Section 4. Confidentiality.

24 Information regarding a lawyer's or a student's participation in a lawyer assistance program

1 and any communications made to or information received by a committee member, peer counselor,
2 or program staff of the program are confidential and may not be disclosed without the consent of the
3 affected party. Confidentiality under this section does not prohibit the disclosure of information when
4 disclosure is considered reasonably necessary to prevent the commission of an act that is believed
5 likely to result in imminent death or imminent substantial bodily harm.

6 **Section 5. Immunity.**

7 A committee member, peer counselor, or program staff in a lawyer assistance program is
8 immune from suit for any conduct in the course of the person's official duties. Any person who in
9 good faith reports information in connection with the program is immune from suit for reporting the
10 information. A lawyer who participates in the program as a committee member, peer counselor, or
11 program staff has qualified immunity from disciplinary complaints for conduct in the course of the
12 lawyer's official duties as a participant in the program.

13 **Section 6. Effective Date.**

14 This rule is effective ~~August 1, 2004~~ _____.

15 Dated at Bismarck, North Dakota, ~~May 12, 2004~~ _____.

16 ATTEST:

17 Penny Miller, Clerk

18 Source: Joint Committee on Attorney Standards Meeting Minutes of June 11, 2002,
19 November 15, 2002, February 28, 2003, September 25, 2003, and November 14, 2003; March 14,
20 2014.