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Rebecca L. Ternes
Inquiry Committee West Member
600 E Boulevard Ave
Bismarck ND 58505-0320

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IN THE OFFICE OF THE
CLERK OF SUPREME COURT

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STATE OF NORTH DAKOTA

Penny Miller
Clerk of the Supreme Court
600 E Boulevard Ave
Bismarck ND 58505-0530

Dear Ms. Miller:

I write to you to comment on the second draft amendments to the North Dakota Rules for Lawyer Discipline. I do so as a lay member of the Inquiry Committee West (ICW), an appointment I have held six years. Currently, I am the longest serving member of ICW.

My concerns on the second proposed changes center around maintaining the quality of the decisions coming out of the Inquiry Committee and whether or not these changes are necessary.

Taking the last concern first, I have heard two specific reasons to change the current system. First, it takes too long to process a complaint and get final decisions out to all parties, and second, there is a perceived inequity amongst the decisions of the three Inquiry Committees.

I agree it takes too long to process complaints. Some of this will likely be alleviated by having Disciplinary Counsel, if FTEs are added, perform the investigations. There are other changes that could speed up the process which would not include any committee organizational changes – inquiry committees could meet more frequently, allow phone meetings for summary dismissals and provide administrative support to Committee chairs. I don't believe the suggested changes will improve speed and may in fact, have the opposite impact.

In fact, with only one chair position, I don't know how that person will handle all of the correspondence, scheduling, copying and mailing that comes with the responsibility. Scheduling of the three-member panels will be more difficult given the need to have lawyers with certain backgrounds involved (defense, family, contract law, etc.) and scheduling the two attorneys at Disciplinary Counsel for these panels will be very difficult.

With regards to perceived inequity amongst committees, I have yet to hear any specific analysis that has been completed indicating what is inequitable and to what extent. Certainly, if the perception exists and there is some reason to believe it, there are other ways to improve this deficiency. Disciplinary Counsel could inform each committee of other committee decisions on a

regular basis, thus educating all of us in the process or the informal dispositions could be described without naming lawyers in the *Gavel* or on the Court website.

While timeliness and equity are important, the quality of our decisions is what is most important. The distinction of being able to regulate one's own profession carries with it the burden of ensuring all parties will be heard and that decision makers, especially volunteers, are provided the time and resources necessary to thoroughly investigate and debate complaints.

ICW members trust each other to have difficult conversations and share perspectives in a benign environment. If committees are made up of three different people competing for airtime on a phone, this same level of trust, and therefore quality of debate, will not occur.

Creating one statewide committee that will have only three people meeting on each complaint will not allow non-lawyers to be mentored and will not allow them to earn credibility with the lawyers of the committee. If this occurs, it will become more difficult than it already is to receive the lay perspective, find non-lawyers to serve and to remain serving throughout their term(s).

The ability for those of us on ICW to meet face-to-face and discuss cases is critical to the process. Our ability to look at the faces of the complainants and respondents and judge their demeanor are likewise as important. We gauge credibility, truthfulness, sincerity and many other factors not available from a shortened, phone conversation.

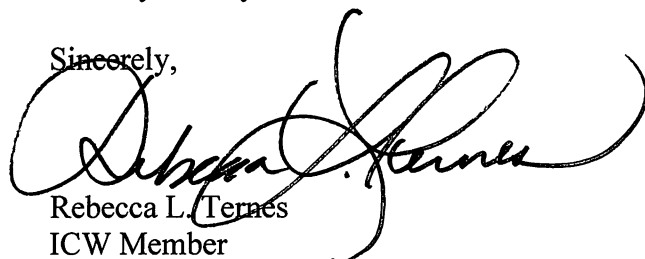
How will the parties be heard, understood and treated fairly on a multi-line phone conversation?

I have found serving on ICW extremely rewarding and I can tell you the rewards stem from participating in a process that results in appropriate decision-making emerging from carefully invested time on very serious issues impacting people's lives in our state.

While the system can definitely be improved, I would like you to reconsider the statewide committee proposal.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca L. Ternes". The signature is fluid and cursive, with a large initial "R" and "T".

Rebecca L. Ternes
ICW Member