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Honorable Gerald W. VandeWalle
Chief Justice
Supreme Court
State Capitol
Bismarck, ND 58505

Dear Chief Justice VandeWalle:

North Dakota Century Code (NDCC) Section 44-05-02 has provided since 1877 that a person conscientiously opposed to swearing an oath may instead affirm an oath and that the affirmation is subject to the penalties of perjury.

Rule 6.10 of the North Dakota Rules of Court was adopted by the Supreme Court effective March 1, 1999, and listed NDCC Section 44-05-02 as a statute superseded. The Supreme Court communicated this action to Lexis Law Publishing and Section 44-05-02 was accordingly published in the 1999 supplement to the North Dakota Century Code with the notation that it has been superseded.

It appears that NDCC Section 44-05-02 is broader in scope than N.D.R. Ct. 6.10 because the rule applies in court proceedings and the statutory provision applies to oaths or affirmations that may occur in many settings outside the courts. The Attorney General's staff contacted John Walstad, Code Revisor, and suggested that Section 44-05-02 is necessary law regarding oaths or affirmations of public officials, notaries public, absentee voters, and others.

The Supreme Court has authority under Article VI, Section 3, of the Constitution of North Dakota and NDCC Section 27-02-09 to supersede certain statutes. Once the Supreme Court has exercised that authority, it appears that only the Supreme Court can change the application of the affected statute. The purpose of this letter is to notify you of this issue so the court can determine if any changes should be made in the 1999 supplement to indicate that Section 44-05-02 continues to apply outside courtroom settings. It appears Section 44-05-02 could be published as it has existed and a note could be added below the section as follows:

NOTE: For the form of an affirmation in court, see N.D.R. Ct. 6.10.

Although this office is responsible for publishing the North Dakota Century Code, we will take no action regarding this issue until we know the position of the court. Thank you for your consideration.

Sincerely,

John D. Olsrud
Director

JDO/LMM

cc: Honorable Heidi Heitkamp