

RECEIVED BY CLERK SEP 30 2014  
SUPREME COURT

20140271

State of North Dakota

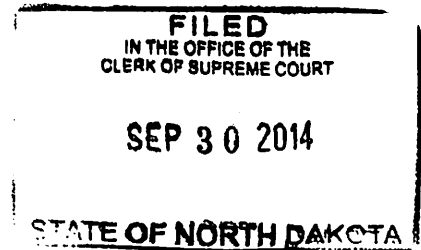
JOINT PROCEDURE COMMITTEE

CHAIR  
JUSTICE DALE V. SANDSTROM  
STAFF ATTORNEY  
MICHAEL J. HAGBURG

FIRST FLOOR JUDICIAL WING  
600 E BOULEVARD AVE DEPT 180  
BISMARCK, ND 58505-0530

September 30, 2014

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



Re: Proposed Amendments to North Dakota Court Rules  
Supreme Court No. 20140271

Dear Chief Justice:

The Joint Procedure Committee submitted its annual Petition for Adoption, Amendment or Repeal of Court Rules to the Supreme Court on July 22, 2014. At its September meeting, the committee discussed issues related to a proposal contained in the July 22 petition.

The committee proposed amendments to N.D.R.Ct. 11.2 (Withdrawal of Attorneys) in its July 22 petition. The proposed amendments were intended to establish a procedure to follow when an attorney seeks to withdraw after a client completely disappears. The committee suggests that additional amendments be made to this rule.

The suggested additional amendments are based on a proposal by Judge David Nelson that the committee discussed at its September meeting. He proposed that attorneys be required to provide all available email and telephone contact information regarding their clients so that the court can attempt to contact the client if it has any questions about a withdrawal application. A copy of the proposed amendments, as considered by the committee, is attached.

The committee appreciates the Court's consideration of this suggestion. Thank you for your attention to this matter.

Sincerely,

Dale V. Sandstrom  
Chair, Joint Procedure Committee

RULE 11.2. WITHDRAWAL OF ATTORNEYS

1 (a) Notice of withdrawal. An attorney's appearance for a party may only be  
2 withdrawn upon leave of court. Reasonable notice of the motion for leave to  
3 withdraw must be given by personal service, by registered or certified mail, or via  
4 a third-party commercial carrier providing a traceable delivery, directed to the  
5 party at the party's last known business or residence address. If the notice is  
6 undeliverable, the attorney must submit an affidavit to the court reciting the efforts  
7 made to give notice.

8 (b) Motion to withdraw. The motion for leave to withdraw must be in  
9 writing and, unless another attorney is substituted, must state the last known  
10 address, e-mail addresses and telephone numbers of the party represented.

11 (c) Withdrawal on Appeal. If a notice of appeal is filed in a matter, any  
12 attorney seeking leave to withdraw must file the motion with the supreme court  
13 clerk.

14 (d) Limited Appearance. This rule does not apply to attorneys representing a  
15 party under a notice of limited representation served under N.D.R.Civ.P. 11(e)  
16 unless the attorney seeks to withdraw from the limited representation itself.

EXPLANATORY NOTE

17  
18 Rule 11.2 was amended, effective March 1, 1999; March 1, 2000; March 1, 2006;

19 March 1, 2009:\_\_\_\_\_.

20 The March 1, 1999, amendments allow notice via a commercial carrier  
21 providing a traceable delivery service.

22 The March 1, 2000, amendments are stylistic.

23 Subdivision (a) was amended, effective \_\_\_\_\_, to require the  
24 attorney, when notice of withdrawal cannot be delivered, to submit an affidavit  
25 regarding the efforts made to provide notice.

26 Subdivision (b) was amended, effective \_\_\_\_\_, to require the  
27 attorney to provide the court with any known party e-mail addresses or telephone  
28 numbers.

29 Subdivision (c) was added, effective March 1, 2006, to make it clear that an  
30 attorney seeking to withdraw from representation in a matter that is on appeal must  
31 file a motion for leave to withdraw with the supreme court clerk. The supreme  
32 court clerk will refer withdrawal motions involving court appointed attorneys to  
33 the trial court for decision and appointment of new counsel.

34 Subdivision (d) was added, effective March 1, 2009, to make it clear that an  
35 attorney who serves a notice of limited representation to represent a party for one  
36 or more matters in a case is not required to formally withdraw upon completion of  
37 activity covered by the notice. Under N.D.R.Civ.P. 11(e), however, the attorney  
38 must serve a notice of termination of limited representation when the attorney's  
39 involvement ends. Rule 11.2 and N.D.R.Civ.P. 5 and 11 were amended to permit

40 attorneys to assist otherwise unrepresented parties on a limited basis without  
41 undertaking full representation of the party.

42 Sources: Joint Procedure Committee Minutes of  
43 \_\_\_\_\_; January 24, 2008, pages 2-7; October 11-12, 2007,  
44 pages 20-26; September 23-24, 2004, page 29; May 6-7, 1999, pages 15-16;  
45 January 29-30, 1998, page 22.

46 Cross Reference: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and  
47 Other Papers), N.D.R.Civ.P. 11 (Signing of Pleadings, Motions and Other Papers;  
48 Representation to Court; Sanctions); N.D.R. Prof. Conduct 1.2 (Scope of  
49 Representation).