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STATE OF NORTH DAKOTA

June 9th, 2016

To: Penny Miller, Clerk of the North Dakota Supreme Court

From: Anne Jorgenson Green, Special Assistant Attorney General
Workforce Safety and Insurance

Re: Written Comment to Proposed Amendments to Rule 11, North Dakota Rules of Civil Procedure, Rule 11.2, North Dakota Rules of Court and North Dakota Rules of Professional Conduct Rule 1.2

North Dakota Workforce Safety and Insurance submits comment on the proposed amendment to the rules captioned above.

The Joint Committee on Attorney Standards, Chaired by Dann Greenwood, indicated in its letter of April 29, 2016 that “the Joint Committee agreed that a writing requirement would be a beneficial addition to the rule. A writing would facilitate a clear definition of the scope of the representation, which would protect both the lawyer and the client.”

While we agree with the committee’s comment, WSI believes the proposed amendment to N.D.R Prof. Conduct 1.2(c) is not specific enough to accomplish the purported goal.. A plain reading of the rule requires only that the client consent in writing *to a limited scope of representation*. The rule does not require the Attorney to draft, and the client to agree, in writing, to the *specifics* of the scope of the representation. The rule does not mandate a writing which outlines the parameters of the representation between lawyer and client. In its current form, the draft does not appear to accomplish the intent laid out in the April 29th letter from the Joint Committee.

In our administrative hearing practice, questions on the scope of representation are ongoing practical ones. Specific issues such as who will accept service, who will file exhibits, and who Counsel for the agency may communicate with provide routine ethical issues. Specificity in the rule would provide certainty for all parties involved in a dispute.

Thank you for your consideration.