

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20150366

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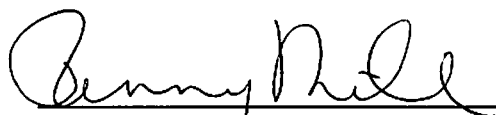
**Proposed Amendments to Rule 11, North Dakota Rules of Civil Procedure, Rule 11.2,  
North Dakota Rules of Court, and Rule 1.2, North Dakota Rules of Professional Conduct**

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[¶ 1] On December 21, 2015, the Joint Procedure Committee filed a petition to amend Rule 11, North Dakota Rules of Civil Procedure 11 regarding signing of pleadings, motions and other papers; representations to court; sanctions; North Dakota Rules of Court 11.2 regarding withdrawal of attorneys; and North Dakota Rules of Professional Conduct 1.2 regarding scope of representation and allocation of authority between client and lawyer. On January 29, 2016, the petition was referred to the Joint Committee on Attorney Standards for review. On April 29, 2016, the Joint Committee on Attorney Standards filed its recommendation that North Dakota Rules of Professional Conduct 1.2 also be amended. The proposed amendments are available at <http://www.ndcourts.gov/Court/Notices/Notices.htm>. The Court considered the matter, and

[¶ 2] **ORDERED**, that proposed amendments to North Dakota Rules of Civil Procedure 11, North Dakota Rules of Court 11.2, and North Dakota Rules of Professional Conduct 1.2 are **ADOPTED**, effective August 1, 2016.

[¶ 3] The Supreme Court of the State of North Dakota convened the 29th day of June, 2016, with the Honorable Gerald W. Vandewalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Carol Ronning Kapsner, the Honorable Daniel J. Crothers, and the Honorable Lisa Fair McEvers, Justices, directing the Clerk of the Supreme Court to enter the above order.



Penny Miller  
Clerk  
North Dakota Supreme Court

RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS;  
REPRESENTATIONS TO COURT; SANCTIONS

1           (a) Signature. Every pleading, written motion, and other paper must be  
2 signed by at least one attorney of record in the attorney's name or by a party  
3 personally if the party is self-represented. The paper must state the signer's  
4 address, electronic mail address for electronic service, and telephone number. If  
5 the signer is an attorney, the paper must contain the attorney's State Board of Law  
6 Examiners identification number. Unless a rule or statute specifically states  
7 otherwise, a pleading need not be verified or accompanied by an affidavit. The  
8 court must strike an unsigned paper unless the omission is promptly corrected after  
9 being called to the attorney's or party's attention.

10           (b) Representations to the Court. By presenting to the court a pleading,  
11 written motion, or other paper, whether by signing, filing, submitting, or later  
12 advocating it, an attorney or self-represented party certifies that to the best of the  
13 person's knowledge, information, and belief, formed after an inquiry reasonable  
14 under the circumstances:

15           (1) it is not being presented for any improper purpose, such as to harass,  
16 cause unnecessary delay, or needlessly increase the cost of litigation;

17           (2) the claims, defenses, and other legal contentions are warranted by  
18 existing law or by a nonfrivolous argument for extending, modifying, or reversing  
19 existing law or for establishing new law;

20 (3) the factual contentions have evidentiary support or will likely have  
21 evidentiary support after a reasonable opportunity for further investigation or  
22 discovery; and

23 (4) the denials of factual contentions are warranted on the evidence or are  
24 reasonably based on belief or a lack of information.

25 (c) Sanctions.

26 (1) In General. If, after notice and a reasonable opportunity to respond, the  
27 court determines that Rule 11(b) has been violated, the court may impose an  
28 appropriate sanction on any attorney, law firm, or party that violated the rule or is  
29 responsible for the violation. Absent exceptional circumstances, a law firm must  
30 be held jointly responsible for a violation committed by its partner, associate, or  
31 employee.

32 (2) Motion for Sanctions. A motion for sanctions must be made separately  
33 from any other motion and must describe the specific conduct that allegedly  
34 violates Rule 11(b). The motion, brief, and other supporting papers must be served  
35 under Rule 5, but must not be filed or be presented to the court if the challenged  
36 paper, claim, defense, contention, or denial is withdrawn or appropriately corrected  
37 within 21 days after service or within another time the court sets. The respondent  
38 must have 10 days after a motion for sanctions is filed to serve and file an answer  
39 brief and other supporting papers. If warranted, the court may award to the  
40 prevailing party the reasonable expenses, including attorney's fees, incurred for the  
41 motion.

42 (3) On the Court's Initiative. On its own, the court may order an attorney,  
43 law firm, or party to show cause why conduct specifically described in the order  
44 has not violated Rule 11(b).

45 (4) Nature of a Sanction. A sanction imposed under this rule must be  
46 limited to what suffices to deter repetition of the conduct or comparable conduct  
47 by others similarly situated. The sanction may include nonmonetary directives; an  
48 order to pay a penalty into court; or, if imposed on motion and warranted for  
49 effective deterrence, an order directing payment to the movant of part or all of the  
50 reasonable attorney's fees and other expenses directly resulting from the violation.

51 (5) Limitations on Monetary Sanctions. The court must not impose a  
52 monetary sanction:

53 (A) against a represented party for violating Rule 11(b)(2); or

54 (B) on its own, unless it issued the show-cause order under Rule 11(c)(3)  
55 before voluntary dismissal or settlement of the claims made by or against the party  
56 that is, or whose attorneys are, to be sanctioned.

57 (d) Inapplicability to Discovery. This rule does not apply to disclosures and  
58 discovery requests, responses, objections, and motions under Rules 26 through 37.

59 (e) Limited Representation.

60 (1) Preparation of Pleadings. An attorney who complies with Rule 1.2 of the  
61 N.D. Rules of Prof. Conduct, may prepare pleadings, briefs, and other documents  
62 to be filed with the court by a self-represented party. The attorney's preparation of  
63 pleadings, briefs, or other documents does not constitute an appearance by the

64 attorney in the case and no notice under Rule 11(e)(2) is required. Any filing  
65 prepared under this paragraph must be signed by the party designated as “self-  
66 represented.”

67 (2) Limited Appearance.

68 (A) In General. An attorney who complies with Rule 1.2 of the N.D. Rules  
69 of Prof. Conduct, may make a “limited appearance” on behalf of an otherwise  
70 self-represented party involved in a proceeding to which these rules apply.

71 ~~(1)~~ (B) Notice. An attorney who assists makes a limited appearance on  
72 behalf of an otherwise self-represented party ~~on a limited basis~~ must serve a notice  
73 of limited ~~representation~~ appearance on each party involved in the matter. The  
74 notice must state precisely the scope of the limited ~~representation~~ appearance. An  
75 attorney who seeks to act beyond the stated scope of the limited ~~representation~~  
76 appearance must serve an amended notice of limited ~~representation~~ appearance.  
77 ~~The attorney must also serve a notice of termination of limited representation on~~  
78 ~~each party involved in the matter~~ Upon completion of the limited appearance, the  
79 attorney must file and ~~distribute~~ serve a “Certificate of Completion of Limited  
80 Appearance” as required by N.D.R.Ct. 11.2(d).

81 ~~(2)~~ (C) Filing. If the action is filed, the party who received assistance of an  
82 attorney on a limited basis must file the notice of limited ~~representation~~ appearance  
83 with the court.

84 (3) Scope of Rule. The requirements of this rule apply to every pleading,  
85 written motion and other paper signed by an attorney acting within the scope of a

86 limited representation.

87 EXPLANATORY NOTE

88 Rule 11 was amended, effective March 1, 1986; March 1, 1990; March 1,  
89 1996; March 1, 1997; August 1, 2001; March 1, 2009; March 1, 2011; March 1,  
90 2014;\_\_\_\_\_.

91 Rule 11 governs to the extent Rule 11 and N.D.R.Ct. 3.2, conflict.

92 Rule 11 was revised, effective March 1, 1996, in response to the 1993  
93 revision of Fed.R.Civ.P. 11. North Dakota's rule differs from the federal rule in the  
94 following respects: 1) North Dakota's rule requires attorneys to cite their State  
95 Board of Law Examiners identification number when signing papers; and 2) North  
96 Dakota's rule does not require allegations or denials to be specifically identified  
97 when immediate evidentiary support is lacking.

98 Subdivision (a) was amended, effective March 1, 2014, to specify that the  
99 e-mail address required in documents signed by an attorney or party is the signer's  
100 e-mail address for electronic service.

101 Subdivision (e) was added, effective March 1, 2009, to permit an attorney  
102 to file a notice of limited representation indicating an intent to represent a party for  
103 one or more matters in a case, but not for all matters. An attorney must also serve a  
104 notice of termination of limited representation when the attorney's involvement  
105 ends. Rule 5, Rule 11 and N.D.R.Ct. 11.2, were amended to permit attorneys to  
106 assist an otherwise self-represented party on a limited basis without undertaking  
107 full representation of the party. Under N.D.R. Prof. Conduct 1.2 (c) a lawyer may

108 limit the scope of the representation if a client consents after consultation.

109 Subdivision (e) was amended, effective \_\_\_\_\_, to add new  
110 paragraphs (1) and (2) providing additional details on the services an attorney may  
111 perform while assisting a self-represented party on a limited basis and indicating  
112 when notice of these services must be provided to other parties and the court. The  
113 new paragraphs are based on language from Neb. R. Prof. Conduct 3-501.2.

114 Rule 11 was amended, effective March 1, 2011, in response to the  
115 December 1, 2007, revision of the Federal Rules of Civil Procedure. The language  
116 and organization of the rule were changed to make the rule more easily understood  
117 and to make style and terminology consistent throughout the rules.

118 SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015,  
119 pages 2-11; April 23-24, 2015, pages 16-25; January 29-30, 2015, page 22; April  
120 25-26, 2013, page 16; September 24-25, 2009, pages 13-14; January 24, 2008,  
121 pages 2-7; October 11-12, 2007, pages 20-26; September 28-29, 1995, pages 2-3;  
122 April 27- 28, 1995, pages 3-4; January 26-27, 1995, pages 8-10; September 29-30,  
123 1994, pages 24-26; April 20, 1989, page 2; December 3, 1987, page 11; April 26,  
124 1984, pages 25-26; January 20, 1984, pages 16-18; September 20-21, 1979, page  
125 7; Fed.R.Civ.P. 11.

126 CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings  
127 and Other Papers); N.D.R.Ct. 11.1 (Nonresident Attorneys); N.D.R.Ct. 11.2  
128 (Withdrawal of Attorneys); N.D.R. Prof. Conduct 1.2 (Scope of Representation);  
129 N.D.C.C. §§ 28-26-01 (Attorney's Fees by Agreement-Exceptions-Awarding Costs

130 and Attorney's Fees to Prevailing Party), and 28-26-31 (Pleadings Not Made in  
131 Good Faith).



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~~ Rule 11.2 (a), (b), and (c) do not  
15 apply to attorneys representing a party under a notice of limited representation  
16 appearance served under N.D.R.Civ.P. 11(e) unless the attorney seeks to withdraw  
17 from the limited representation itself appearance prior to its completion. Upon  
18 completion of the limited appearance, the attorney must within 14 days file a  
19 “Certificate of Completion of Limited Appearance” with the court. Copies of the  
20 certificate must be provided to the client and served upon opposing counsel or

21 opposing party if unrepresented. After the filing, the attorney has no further  
22 obligation to represent the client. The filing of the certificate is considered to be  
23 the attorney's withdrawal of appearance and does not require court approval.

24 EXPLANATORY NOTE

25 Rule 11.2 was amended, effective March 1, 1999; March 1, 2000; March 1,  
26 2006; March 1, 2009; March 1, 2015;\_\_\_\_\_.

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

29 The March 1, 2000, amendments are stylistic.

30 Subdivision (a) was amended, effective March 1, 2015, to require the  
31 attorney, when notice of withdrawal cannot be delivered, to submit an affidavit  
32 regarding the efforts made to provide notice.

33 Subdivision (b) was amended, effective March 1, 2015, to require the  
34 attorney to provide the court with any known party e-mail addresses or telephone  
35 numbers.

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

41 Subdivision (d) was added, effective March 1, 2009, to make it clear that an  
42 attorney who serves a notice of limited representation to represent a party for one

43 or more matters in a case is not required to formally withdraw upon completion of  
44 activity covered by the notice. Under N.D.R.Civ.P. 11(e), however, the attorney  
45 must serve a notice of termination of limited representation when the attorney's  
46 involvement ends. Rule 11.2 and N.D.R.Civ.P. 5 and 11 were amended to permit  
47 attorneys to assist otherwise unrepresented parties on a limited basis without  
48 undertaking full representation of the party.

49 Subdivision (d) was amended, effective \_\_\_\_\_, to clarify  
50 the attorney's responsibilities upon completing a limited appearance and to clarify  
51 that court approval is not required when the attorney completes the limited  
52 appearance and withdraws.

53 SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015,  
54 pages 11-12; April 23-24, 2015, pages 16-25; January 29-30, 2015, page 22;  
55 September 25-26, 2014, pages 3-4; April 24-25, 2014, pages 26-27; January 24,  
56 2008, pages 2-7; October 11-12, 2007, pages 20-26; September 23-24, 2004, page  
57 29; May 6-7, 1999, pages 15-16; January 29-30, 1998, page 22.

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

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY  
BETWEEN CLIENT AND LAWYER

1           (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's  
2           decisions concerning the objectives of representation and, as required by Rule 1.4,  
3           shall consult with the client as to the means by which they are to be pursued. A  
4           lawyer may take such action on behalf of the client as impliedly authorized to  
5           carry  
6           out the representation. A lawyer shall abide by a client's decision whether to settle  
7           a matter. In a criminal case, the lawyer shall abide by the client's decision, after  
8           consultation with the lawyer, as to a plea to be entered, whether to waive jury trial  
9           and whether the client will testify.

10           (b) A lawyer's representation of a client, including representation by  
11           appointment, does not constitute an endorsement of the client's political, economic,  
12           social or moral views or activities.

13           (c) A lawyer may limit the scope of the representation if the client consents  
14           in writing after consultation.

15           (d) A lawyer shall not counsel a client to engage, or assist a client, in  
16           conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss  
17           the legal consequences of any proposed course of conduct with a client and may  
18           counsel or assist a client to make a good faith effort to determine the validity,  
19           scope, meaning or application of the law.

19           Comment

20           Scope of Representation

21           [1] Paragraph (a) confers upon the client the ultimate authority to determine  
22           the purposes to be served by legal representation, within the limits imposed by law  
23           and the lawyer's professional obligations. The decisions specified in paragraph (a),  
24           such as whether to settle a civil matter, must also be made by the client. See Rule  
25           1.4(a)(1) for the lawyer's duty to communicate with the client about such  
              decisions.

26           With respect to the means by which the client's objectives are to be pursued, the  
27           lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take  
28           such action as is impliedly authorized to carry out the representation.

29           [2] On occasion, however, a lawyer and a client may disagree about the  
30           means to be used to accomplish the client's objectives. Clients generally defer to  
31           the special knowledge and skill of their lawyer with respect to the means to be  
32           used to accomplish their objectives, particularly with respect to technical, legal and  
33           tactical matters. Conversely, lawyers usually defer to the client regarding such  
34           questions as the expense to be incurred and concern for third persons who might be  
35           adversely affected. The lawyer should consult with the client and seek a mutually  
36           acceptable resolution of any disagreement. If such efforts are unavailing and the  
37           lawyer has a fundamental disagreement with the client, the lawyer may withdraw  
38           from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve  
39           the disagreement by discharging the lawyer. See Rule 1.16(a)(4).

40 [3] At the outset of a representation, the client may authorize the lawyer to  
41 take specific action on the client's behalf without further consultation. Absent a  
42 material change in circumstances and subject to Rule 1.4, a lawyer may rely on  
43 such an advance authorization. The client may, however, revoke such authority at  
44 any time.

45 [4] In a case in which the client appears to have limited capacity, the  
46 lawyer's duty to abide by the client's decisions is to be guided by reference to Rule  
47 1.14.

#### 48 Independence From Client's Views or Activities

49 [5] Legal representation should not be denied to people who are unable to  
50 afford legal services, or whose cause is controversial or the subject of popular  
51 disapproval. By the same token, representing a client does not constitute approval  
52 of the client's views or activities.

#### 53 Agreements Limiting Scope of Representation

54 [6] The scope of services to be provided by a lawyer may be limited by  
55 agreement with the client or by the terms under which the lawyer's services are  
56 made available to the client. Paragraph (c) allows the lawyer to limit the scope of  
57 representation if the client consents. ~~Obtaining the client's consent in writing the~~  
58 ~~preferred practice. Lack of a writing may make it difficult to prove client consent~~  
59 ~~if a dispute arises later.~~ When a lawyer has been retained by an insurer to represent  
60 an insured, for example, the representation may be limited to matters related to the  
61 insurance coverage. A limited representation may be appropriate because the client

62 has limited objectives for the representation. In addition, terms upon which  
63 representation is undertaken may exclude specific means that might otherwise be  
64 used to accomplish the client's objectives. Such limitations may exclude actions  
65 that the client thinks are too costly or that the lawyer regards as repugnant or  
66 imprudent.

67 [7] Although an agreement for a limited representation does not exempt a  
68 lawyer from the duty to provide competent representation, the limitation is a factor  
69 to be considered when determining the legal knowledge, skill, thoroughness and  
70 preparation reasonably necessary for the representation. See Rule 1.1.

71 [8] All agreements concerning a lawyer's representation of a client must  
72 accord with these Rules and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

### 73 Criminal, Fraudulent, and Prohibited Transactions

74 [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting  
75 a client to commit a crime or fraud. The prohibition, however, does not preclude  
76 the lawyer from giving an honest opinion about the actual consequences that  
77 appear likely to result from a client's conduct. Nor does the fact that a client uses  
78 advice in a course of action that is criminal or fraudulent of itself, make a lawyer a  
79 party to the course of action. There is a critical distinction between presenting an  
80 analysis of legal aspects of questionable conduct and recommending the means by  
81 which a crime or fraud might be committed with impunity.

82 [10] When the client's course of action has already begun and is continuing,  
83 the lawyer's responsibility is especially delicate. The lawyer is not permitted to

84 reveal the client's wrongdoing, except where required or permitted by Rule 1.6.  
85 The lawyer is required to avoid assisting the client, for example, by drafting or  
86 delivering documents that the lawyer knows are fraudulent or by suggesting how  
87 the wrongdoing might be concealed. A lawyer may not continue assisting a client  
88 in conduct that the lawyer originally supposed was legally proper but then  
89 discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the  
90 representation of the client in the matter. See Rule 1.16(a). In some cases,  
91 withdrawal alone might be insufficient. It may be necessary for the lawyer to give  
92 notice of the fact of withdrawal and to disaffirm any opinion, document,  
93 affirmation or the like. See Rule 4.1.

94 [11] Where the client is a fiduciary, the lawyer may be charged with special  
95 obligations in dealings with the beneficiary.

96 [12] Paragraph (d) applies whether or not the defrauded party is a party to  
97 the transaction. Hence, a lawyer must not participate in a transaction to effectuate  
98 criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude  
99 undertaking a criminal defense incident to a general retainer for legal services to a  
100 lawful enterprise. The last clause of paragraph (d) recognizes that determining the  
101 validity or interpretation of a statute or regulation may require a course of action  
102 involving disobedience of the statute or regulation or of the interpretation placed  
103 upon it by governmental authorities.

104 [13] If a lawyer comes to know or reasonably should know that a client  
105 expects assistance not permitted by these Rules or other law or if the lawyer



106 intends to act contrary to the client's instructions, the lawyer must consult with the  
107 client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

108 Reference: Minutes of the Professional Conduct Subcommittee of the  
109 Attorney Standards Committee as amended 10/21/83, 02/03/84, 03/16/84,  
110 05/23/84, 06/27/84; Minutes of the Joint Committee on Attorney Standards on  
111 11/15/02, 02/28/03, 09/25/03, 11/19/04, 02/26/16.