

**STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE
OPINION NO. 15-07**

QUESTION PRESENTED

The Ethics Committee has been asked to render its opinion on whether Attorney A may ethically withdraw without leave of court, or must Attorney A file the case (incurring the cost of the filing fee) and bring a motion for leave to withdraw?

OPINION

Based on the facts presented below, Attorney A must file the case, incurring the cost of a filing fee, and bring a motion for leave to withdraw. Withdrawal without leave of court would be in violation of Rule 11.2 of N.D.R.Ct., and therefore also in violation of Rule 3.4(c) of N.D.R. Prof. Conduct.

APPLICABLE NORTH DAKOTA RULES OF PROFESSIONAL CONDUCT

Rule 3.4(c), N.D.R. Prof. Conduct: Fairness to Opposing Party and Counsel
Rule 11.2, N.D.R.Ct: Withdrawal of Attorneys

FACTS PRESENTED

Attorney A serves a summons and complaint which is answered by Party B's attorney. After the summons and complaint are served, Attorney A's client moves out of the jurisdiction, stops paying Attorney A's attorney's fees, and/or stops communicating, prompting Attorney A to seek to withdraw.

DISCUSSION

Rule 3.4(c) of N.D.R. Prof. Conduct prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. One such rule is N.D.R.Ct. 11.2.

Specifically, Rule 11.2(a) of N.D.R.Ct. provides an attorney's appearance for a party may only be withdrawn upon leave of court. Generally, appearance can be defined as, "a coming into court by a party to a suit, either in person or through an attorney", or "the voluntary submission to a court's jurisdiction". In this case, by serving a summons and complaint, Attorney A is making an appearance by voluntarily submitting himself and his client to that court's jurisdiction.

Further, reasonable notice of the motion for leave to withdraw must be given by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery, directed to the party at the party's last known business or residence address. If the notice is undeliverable, the attorney must submit an affidavit to the court reciting the efforts made to give notice.

Furthermore, Rule 11.2(b) of N.D.R.Ct. provides the motion for leave to withdraw must be in writing and, unless another attorney is substituted, must state the last known address, email addresses and telephone numbers of the party represented.

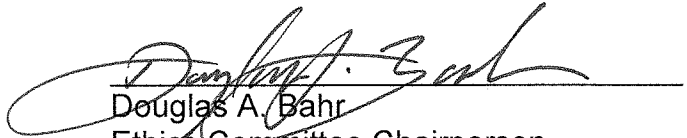
CONCLUSION

Attorney A must file the case, incurring the cost of a filing fee, and bring a motion for leave to withdraw. Withdrawal without leave of court would be in violation of Rule 11.2 of N.D.R.Ct., and therefore also in violation of Rule 3.4(c) of N.D.R. Prof. Conduct.

Rule 11.2 of N.D.R.Ct. provides that an attorney's appearance for a party may only be withdrawn upon leave of court. Rule 11.2 does not, however, indicate whether there can be an "appearance" in a case that has never been filed with the court.

Rule 3.4(c) of N.D.R. Prof. Conduct provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal.

This opinion was drafted by Ward K. Johnson, III, and was unanimously approved by the Ethics Committee on the 1st day of September, 2015.


Douglas A. Bahr
Ethics Committee Chairperson

This opinion is provided under Rule 1.2(B), North Dakota Rules for Lawyer Discipline, which states:

A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter.