

LO 87-02

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January 21, 1987

Re: Ethics Committee Opinion

Dear [REDACTED]

This is to let you know that the Ethics Committee of the State Bar Association took up the matters presented by your letter of November 19, 1986, at a meeting on January 20, 1987.

Your question, in essence, is whether it would be ethically permissible for you to advertise in an attempt to discover other persons who may have been injured on defendant's premises in a manner similar to your client.

It is the opinion of this Committee that it is permissible for you to run an ad in an attempt to locate witnesses, so long as the ad itself is not misleading, unfair, or deceptive.

The above letter opinion is issued for advisory purposes only and is not binding on you, the courts of North Dakota, the Disciplinary Board, Grievance Committees, or any other member of the bar of the State of North Dakota.

Sincerely,

Patrick J. Ward, Chairman
Ethics Committee

PJW:gb

87-02

November 19, 1986

Paul Richard
Attorney at Law
P.O. Box 6017
Fargo, ND 58102

Dear Paul:

Our office represents a client who was injured on the waterslide in Fargo last July. She has suffered a permanent injury to her back as a result of being struck from behind by another rider. Our lawsuit alleges that the owner/operator of the waterslide was negligent in failing to control the number of riders going down the slide at any one time, and the rate at which the riders could proceed. Had the owner effectively monitored the distance between riders, the collision which resulted in the injury would not have occurred.

I have received Answers to Interrogatories which indicate that a limited number of other persons have suffered injuries on the waterslide. However, in conducting a minimal investigation, and talking to other persons in the community, it is my opinion that the number of injuries reported in Answers to Interrogatories is grossly understated. Since the owner/operator of the waterslide is either unwilling or unable to provide us with any further information relating to the identity of riders of the slide, it will be extremely difficult to obtain the names of other injured parties through the ordinary course of discovery and investigation. Accordingly, I would like to advertise locally in order to discover the identity of other persons who might have been injured on the slide, so that they may testify on behalf of my client.

It is my understanding that other persons have been injured in the same manner as my client was injured. This has, however, been denied by the defendant.

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Paul F. Richard
November 19, 1986

While I have seen such advertising in other cases, I am aware that there is a fine line between advertising for witnesses, and solicitation. Therefore, I am requesting guidance from the eithics committee as to whether such advertising is proper, and if so, I would appreciate as to what may be included in such an advertisement.

As is customary in the practice of law, I would appreciate an answer as soon as possible. Thank you for your cooperation.

Regards,

[REDACTED]