

LO 87-04

ZUGER & BUCKLIN

COUNSELORS AND ATTORNEYS AT LAW

MAILING ADDRESS P.O. BOX 1695
BISMARCK, N.D. 58502-1695

STREET ADDRESS 5TH AT ROSSER
PROVIDENT LIFE BLDG.
BISMARCK, N.D. 58502-1695
TELEPHONE (701) 223-2711

JOHN A. ZUGER, P.C.
LEONARD H. BUCKLIN, P.C.
LYLE W. KIRMIS
ROBERT V. BOLINSKE
THOMAS O. SMITH, P.C.
MURRAY G. SAGSVEEN, P.C.
LANCE D. SCHREINER, P.C.
JAMES S. HILL, P.C.
PATRICK J. WARD
REBECCA THOMAS BENSON, P.C.
MICHAEL G. FIERGOLA
CHARLES T. EDIN
DANIEL S. KUNTZ
MICHAEL G. LIFFRIG
JON E. STRINDEN

April 21, 1987

[REDACTED]

Re: Ethics Opinion

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota met on April 20, 1987, to discuss your letter of April 2, 1987.

The question you present is whether there is a conflict of interest between your representation of an existing client and another member of your firm's representation of a former client. The existing client is an engineering firm which is being sued by the former client for malpractice in the design of an access road to a resort facility. The former client does not consent to your representation and you have not indicated whether the potential conflict has been discussed with the existing client.

The question you have presented is a very close one and concerns were expressed by members of the Committee. We reviewed the matter both from the perspective of the existing Code of Professional Responsibility and the proposed Model Rules.

Based on the factual information outlined in your letter, we do not believe there is a conflict of interest precluding your representation of the engineering firm at the present time. However, there are numerous potential problems which could result if the facts changed so that it appeared that some knowledge from your former representation of the resort owner could be used to benefit your existing client in the action against the resort owner.

Page 2
4/21/87

We recommend that you fully discuss the situation and the potential conflicts with your present client and obtain written consent after full disclosure to the representation. Further, we caution you to be wary of an actual conflict arising in the future and be prepared to withdraw from representing the engineering firm if such conflict does arise.

This letter opinion is advisory only and under present North Dakota rules is not binding on you, the Disciplinary Board, Grievance Committee, the courts of North Dakota, or any other person or organization.

Sincerely,

Patrick J. Ward

PJW:gb