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June 2, 1988

[REDACTED]

Re: Ethics Question

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota addressed the questions raised in your letter of April 1, 1988 in its meeting on June 1, 1988.

The Committee had some question about whether the problem you posed is an ethical or practical problem.

You asked what obligations you have to determine a client's competency to assist in and make decisions about his personal injury case if the client blocks your efforts to obtain an expert opinion on his competency.

Rule 1.14 of the North Dakota Rules of Professional Conduct provides as follows:

"When a client's ability to make adequately considered decisions in connection with the representation is impaired, the lawyer shall, as far as reasonably possible, maintain a normal client--lawyer relationship with the client."

It is difficult to tell whether your client's rejection of the offer and proposed counteroffer are in any way outside the normal client--lawyer relationship in that regard.

The comments to Rule 1.14 provide:

"In those situations where a legal representative has not been appointed but in the lawyer's professional judgment such an appointment would

serve the client's best interests, or is in fact necessary for the effective completion of the transaction involving the client's property, the lawyer should seek to have a legal representative appointed to act on behalf of the client. The nature and the extent of the client's disability may be disclosed by the lawyer to the extent the lawyer reasonably believes necessary to obtain the appointment of a legal representative.

When considering the nature and extent of a client's disability and whether or not disclosure of the client's condition is necessary in the advancement of the client's interest, a lawyer may consult with an appropriate diagnostician."

You must first determine whether the client is acting as a reasonable person would act in regard to the particular matter involved. In this case, the matter is the reasonableness of the settlement offer. The Committee feels there is a strong presumption of competency on the part of the client and if his request is reasonable, it must be honored by his attorneys. If you believe the client to be incompetent, you should seek legal intervention through the appointment of a guardian or conservator or at least approval of a single transaction as provided for under the Uniform Probate Code. It would appear that your options would be to proceed with the case as the client desires, withdraw from the client's representation completely, or seek some kind of legal protection for the client.

Obviously, the Code does require you to make a determination as to the reasonableness of your client's request and whether or not he is competent to make such decisions. If your feeling is that he is not competent to make such decisions, you should seek the appointment of an appropriate legal representative to protect the client's interests as provided by the rules.


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We hope this letter is of some assistance to you.

Sincerely,

Patrick J. Ward, Chairman
Ethics Committee, State
Bar Association of North
Dakota

PJW:gb
a: 

88-05

April 1, 1988

Mr. Patrick Ward
Ethics Advisory Committee
P.O. Box 1695
Bismarck, ND 58502

Re: Question concerning client's competence

Dear Mr. Ward:

We are faced with an ethical dilemma relating to a file we are currently working on. By this letter we hope to obtain some guidance on how to resolve this problem.

The law firm entered into a contingency fee contract with the client several years ago for the prosecution of a personal injury claim. Recently, a settlement offer was tendered to us. We relayed the terms of the offer to our client. The client rejected the offer but authorized us to counteroffer. The client also told a relative about the proffered terms of settlement and his counteroffer. The relative informed us that he would file a complaint with the Disciplinary Board if we allowed the client to make his own decision on the offer and counteroffer. The relative claimed the client was not competent to make such decisions.

The firm has had its own questions about the client's competency. In an attempt to resolve this dilemma, we asked the client to sign releases allowing us to communicate with a counselor he is seeing. We had hoped that the counselor could either provide an opinion on our client's competency or persuade the client to be evaluated by someone who could give us an opinion. The client has so far refused to sign the release forms.

The client and his family are indigent. We have suggested to the relative that if he had questions about the client's competency, he should have a guardianship established for the client. Although the relative has generally agreed with this proposition, he has not initiated guardianship proceedings.

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Mr. Patrick Ward
April 1, 1988
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What obligations do we have to determine a client's competency to assist in and make decisions about his case if the client blocks our efforts to obtain an expert opinion on his competency?

It is our opinion that the client's case has definite merit.

Your advice on this matter would be appreciated.

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]