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May 2, 1989

[REDACTED]

Re: Request for Ethics Committee Opinion

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota at its meeting on May 1, 1989, discussed the request presented by you in your letter of March 7, 1989.

Based on the facts outlined in your letter and assuming all relevant information has been provided to the Committee, we do not perceive a conflict of interest in your representation of client number two in light of the fact that the recovery sought is not adverse to that obtained by client number one, the two clients positions are not adverse as to the attack on the 1985 will, and because of the fact that you have obtained consent from client number two.

Any potential conflict, if one is likely to be raised, will be raised by client number one. If you are concerned about that, you could obtain the consent of client number one pursuant to Rule 1.9(b). It is not required that you do so unless you feel that client number two's interests are materially adverse to the interests of client number one, in which case the consent of client number one would be required.


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We hope this letter is of some assistance to you in enabling you to conform your conduct to the requirements of the rules of professional conduct.

Sincerely,

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

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March 7, 1989

Patrick J. Ward, Chairperson
SBAND Ethics Committee
Box 1695
Bismarck, ND 58502

Re: Request for opinion

Dear Mr. Ward & Committee,

Question: 1) Is it a conflict of interest for an attorney to represent two will contestants when the two claims are not adverse, and client two waives any conflict of interest, if any?
2) Is it a conflict of interest for an attorney to settle the claim for client two?

Facts. Decedent made a 1952 will, 1977 codicil, and 1985 will. The 1985 will revoked prior wills/codicils. Decedent was 93 years old when the 1985 will was made; it left all to a nephew and niece. I represented another nephew (client one) who was left land under the 1977 codicil. Client one reached a written settlement agreement with the 1985 will claimants, who were represented by counsel. The forum is before federal administrative law judge as Indian trust land is at issue.

Later, another niece claimed under the 1952 will. She asked if I would represent her. Before taking her claim I explained the prior settlement with client one; that I thought her interests were not adverse to land claimed under the 1977 codicil; and no conflict existed. The 1952 will claimant then signed a statement waiving a conflict of interest by me, if any. The statement noted she could obtain independent counsel. Statement dated August 12, 1988 attached. The 1952 will claimant became client two.

Both claims challenged the 1985 will for lack of capacity and undue influence. Each sought recovery from land interests separate or not adverse to each other. Client two has executed a written offer to settle, which notes it is not a conflict of interest for me to represent her. Statement dated March 6, 1989 attached.

Counsel for the 1985 will claimants has not raised the conflict issue by motion. ND Rules of Professional Conduct, Rule 1.7 Comment p. 687 notes it is up to the party undertaking representation to resolve questions of conflict of interest. To resolve the matter I request an opinion.

Rules. ND Rules of Professional Conduct, Rule 1.7 prohibits an attorney from representing multiple clients with adverse interests. Rule 1.7 (c) (2) allows for a client to waive a conflict of interest. Rule 1.8 (g) states an aggregate settlement cannot be made unless, after consultation, including disclosure of the existence and nature of all claims ... each client consents.

In this instance, client one settled; client two's claim is not adverse to the first claim; and client two waived any conflict of interest.

Note that family settlements are favored. A beneficiary under a will contest may make such settlement as she or he sees fit with any one or more will contestants. 80 Am. Jur. 2d Compromise and Settlement, Sections 1098, 1104 note 28.

Finally, I attended a SBAND Rules seminar which was very informative and helpful. I did my best to comply with the rules in this matter.

encls.

Sincerely, 

