

[REDACTED]
Page 2
5/2/89

We hope this letter is of some guidance to you in conforming your conduct to the mandates of the North Dakota Rules of Professional Conduct.

Sincerely,

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

PJW:gb
[REDACTED]

L-3421.lit

89-043

4/10/mtg
5/1

[REDACTED]

March 7, 1989

Mr. Patrick J. Ward, Esq.
Chairman
SBAND Ethics Committee
316 North 5th Street
P. O. Box 1695
Bismarck, ND 58502

Re: Ethics Opinion

Dear Mr. Ward:

This firm currently represents [REDACTED] in a civil action against the Department of Public Instruction and its Director of Special Education.

On February 21, 1989, I wrote Dr. Wayne Sanstead, Superintendent of Public Instruction, concerning unrelated actions by DPI employees affecting [REDACTED]. I had reviewed the provisions of Rule 4.2 of the Rules of Professional Conduct prior to writing Dr. Sanstead and believed my actions to be permissible under that Rule. I furnished Assistant Attorney General [REDACTED] with a courtesy copy of my letter to Dr. Sanstead.

On February 24, 1989, [REDACTED] informed me that she believed my letter to Dr. Sanstead was "inappropriate and unethical," and she threatened a disciplinary complaint if I didn't channel all future communications, of whatever nature, through her.

I informed [REDACTED] of the provisions of Rule 4.2 and accompanying Comment, stated that the subject-matter of my letter to Dr. Sanstead was entirely unrelated to the pending litigation, and reasserted my right to communicate with public officials regarding matters not the subject of current representation.

Mr. Patrick J. Ward, Esq.

Page 2

March 7, 1989

██████████ again termed my conduct "unethical," accused me of trying to intimidate Dr. Sanstead, and threatened Rule 11 sanctions if I brought a separate lawsuit based on the subject matter of my original letter.

Finally, I learned that ██████████ had advised Dr. Sanstead that no employee of DPI was permitted to communicate with either ██████████ or myself about anything, unless ██████████ was present. Dr. Sanstead followed up by issuing a memo implementing ██████████ advice to each of his (approximately seventy) employees on February 24, 1989. One DPI employee jokingly told ██████████ that they should meet socially for coffee, but ██████████ would have to be invited also.

All joking aside, I view ██████████ directive to DPI employees as a serious threat to this firm's practice. As you may be aware, this firm maintains an active practice against the State, and State employees are a natural part of our client base. If the State's attorneys are permitted to interrupt all communications, of whatever type, between State employees and ourselves, it will seriously affect our practice. The fact that we currently represent employees from a number of State agencies, including DPI, only serves to add to our concern. A number of DPI employees have indicated a desire to engage my services (totally unrelated to the pending litigation) but feel coerced into not doing so by ██████████ directives.

I am requesting an ethics opinion concerning the proper interpretation of Rule 4.2. I am convinced that I am not ethically precluded from contacting State employees and officials about matters unrelated to current representation. Although I have not yet done so, I am also convinced that I am not ethically precluded from communicating with non-policymaking State employees regarding the subject of current representation. Finally, I do not believe that an attorney for the State can ethically prohibit State employees from communicating with me concerning matters unrelated to current representation. The answers to these questions will impact far beyond the narrow context in which they arose. If it goes unchecked, this new tactic employed by the State's attorneys is likely to have a very chilling effect on any attempt to litigate against the State.

Mr. Patrick J. Ward, Esq.
Page 3
March 7, 1989

Copies of all referenced correspondence are enclosed.
Thank you for your consideration in this matter.

Sincerely,

A large, irregular black redaction mark covering the signature and name of the sender.

SDL:ps

Enclosures

c: 

60 89-04

ZUGER, KIRMIS, BOLINSKE & SMITH

JOHN A. ZUGER, 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 THIEB BENSON, P.C.*
MICHAEL G. FIERGOLA**
CHARLES T. EDIN

COUNSELORS AND ATTORNEYS AT LAW

316 N. 5TH STREET
PROVIDENT LIFE BUILDING
P.O. BOX 1695
BISMARCK, N.D. 58502-1695
(701) 223-2711
Fax: (701) 223-7387

DANIEL S. KUNTZ
JON E. STRINDEN*
BRENDA L. BLAZER
JERRY W. EVENSON

ALSO LICENSED IN
MINNESOTA*
SOUTH DAKOTA**
ILLINOIS***

May 2, 1989

[REDACTED]

Re: Ethics Committee Opinion

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota discussed your request of March 9, 1989.

The function of this Committee is to provide advisory opinions to attorneys faced with an ethical dilemma. We believe that Rule 4.2 of the North Dakota Rules of Professional Conduct addresses the situation in which you are involved and that both you and [REDACTED] are aware of the provisions of that rule.

Because we are not constituted as a fact-finding agency, we cannot go beyond interpretation and advice as to the rule in addressing your letter. Either you or [REDACTED] will have to take your dispute to a forum with fact-finding authority if you feel it is necessary to do so. From the standpoint of the functions of this particular Committee, we believe that Rule 4.2 and the comments to the rule outline permissible attorney conduct in this situation.