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May 2, 1989

Re: Ethics Committee Opinion

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota at its meeting on May 1, 1989, discussed your letter of March 31st.

We believe the fee arrangement which you propose in your letter is permissible so long as that arrangement is in accordance with Rule 1.5 in general and in particular Rule 1.5(c) of the North Dakota Rules of Professional Conduct.

We hope this letter is of some assistance to you in conducting your practice in compliance with the rules.

Sincerely,

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

PJW:gb
 [REDACTED]

89-06 5/11/89

[REDACTED]

March 31, 1989

Mr. Patrick Ward
P.O. Box 1695
Bismarck, ND 58502-1695

Re: Ethics Committee Opinion Request

Dear Pat:

Pursuant to our telephone conversation yesterday, I am submitting an ethic opinion request.

The basic question is whether an attorney at law in North Dakota may accept a real estate referral fee or commission, in conjunction with performing related legal services?

The facts are essentially as follows. An attorney is engaged to prepare a purchase agreement, and prepare or review other legal documents as required by a proposed commercial real estate purchase. The client requests that the attorney present the purchase agreement to seller's realtor and explain and/or negotiate the document and purchase as necessary and incidental to his role as purchaser's attorney.

Purchaser, seller and seller's realtor subsequently agree that purchaser's attorney should receive 25% of the real estate commission for his role in the transaction.

Does your committee have a problem with this arrangement?

It appears to me that this type of arrangement should be acceptable in North Dakota. First, North Dakota law exempts attorneys from the real estate broker licensing requirement. N.D. Century Code §43-23-07. Second, similar arrangements have been considered by courts in various states that have attorney exemptions. The majority view appears to be that such arrangements are acceptable when the real estate services are performed as an incidental part of or in conjunction with the performance of related legal services. See 23 ALR 4th 230 and enclosed supplement copy.

Let me know if you require any further information.

Respectfully submitted,
[REDACTED]

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Bank v First
NW2d 387, 39

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to payor bank
on ground that

payor bank dishonored check but did not
return it until after clearinghouse's 1:00 p.m.
deadline for "return items," court held (1)
that under UCC § 4-213(1)(d) and Official Com-
ment 6, payor bank's failure to revoke provi-
sional settlement for check and return check
by clearinghouse's 1:00 p.m. deadline consti-
tuted "final payment" of check; (2) that under
UCC § 4-301(4)(a), items received through
clearinghouse can be returned only in accord-
ance with clearinghouse rules; (3) that al-
though UCC § 4-103(1) provides that effect of
Article 4 can be varied by agreement, clear-
inghouse rules under UCC § 4-103(2) have
effect of "agreement" within meaning of UCC
§ 4-103(1) and thus supersede code's statutory
provisions; and (4) that as a result of such
"agreement," (a) clearinghouse's 1:00 p.m.
deadline for "return items" superseded payor
bank's statutory midnight deadline under
UCC §§ 4-104(1)(h) and 4-301(1), and (b) payor
bank was accountable for check under UCC
§§ 4-213(1)(d) and 4-302(a). Lockhart Sav. &
Loan Assn. v RepublicBank Austin (1986, Tex
App Austin) 720 SW2d 193, 3 UCCRS2d 699,
writ ref n r e.

23 ALR4th 230-240

§ 1. Introduction

[b] Related matters

Transactions within public security or guar-
anty fund designed to compensate those suf-
fering damage or loss on account of real-
estate brokers' defalcations. 38 ALR4th 792.

Validity of state or municipal tax or license
fee upon occupation of practicing law. 50
ALR4th 467.

VERALEX®: Cases and annotations referred
to herein can be further researched
through the VERALEX electronic re-
trieval system's two services, Auto-Cite®
and SHOWME®. Use Auto-Cite to check
citations for form, parallel references,
prior and later history, and annotation
references. Use SHOWME to display the
full text of cases and annotations.

§ 5. Under statutes exempting attorneys from real-estate licensing require- ments only while acting within scope of duties as attorneys

In action by attorneys for real estate com-
missions arising out of negotiation of contract
of sale, trial court properly awarded commis-
sions where, even though attorneys were not
licensed real estate brokers, attorneys had
apparent authority to enter into agreement.

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Atlantic Richfield Co. v Sybert (1982) 51 Md
App 74, 441 A2d 1079.

23 ALR4th 251-264

§ 1. Introduction

[b] Related matters

VERALEX®: Cases and annotations referred
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through the VERALEX electronic re-
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and SHOWME®. Use Auto-Cite to check
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prior and later history, and annotation
references. Use SHOWME to display the
full text of cases and annotations.

§ 3. Statements failing to use precise lan- guage of rule

Rule governing admonitions, which stated,
inter alia, that before accepting plea of guilty
court had to tell defendant that he was waiv-
ing right to jury trial and right to be con-
fronted by witnesses against him, required
only substantial compliance; thus, defendant's
contentions that admonitions were inadequate
as lacking, inter alia, warning that he was
waiving right to confront his accusers and
explanation of what jury trial entailed were
without merits since first omission did not
constitute substantial defect and second con-
cerned matter not covered by rule and not
requiring admonition. People v Stice (1987,
5th Dist) 160 Ill App 3d 132, 112 Ill Dec 49,
513 NE2d 463.

Failure of trial court to strictly comply with
language of statute in advising defendant that
by pleading guilty he was admitting truth of
all facts alleged in indictment or that upon
entry of such plea court would proceed with
judgment and sentence warranted reversal.
Sexton v State (1983, Ind) 455 NE2d 910.

See Jones v State (1985, Ind) 479 NE2d 539,
§ 4.

Trial judge adequately informed defendant
of his right to public trial, despite his failure
to use specific language of applicable statute,
where he told defendant he had right to early
and speedy trial with 12 people, that he could
not be convicted unless all 12 members of
jury agreed on his guilt, and that he had
right to confront and cross-examine state's
witnesses and subpoena witnesses to testify in
his defense. Parker v State (1986, Ind) 500
NE2d 189.

Trial court erred in failing to specifically
advise defendant of rights enumerated in stat-
ute before accepting guilty plea, even though

court advised that there was
right to trial and accompany:
were accepted, inquired wh
had questions about trial righ
sel advised client of statuto
tional rights, and defendant
guilty. People v Richardson (1
App 616, 376 NW2d 167.

§ 4. Statements using term

[a] Held sufficient

Omission of words "public a
ing discussion of right to trial
constitute fundamental error
dant clearly knew how speedy
be in that he had acknowle
that he knew it was set to
later, and where court's disc
trial, including discussion of
and types of witnesses and of
would be present, was suffi
defendant of his right to p
ringer v State (1983, Ind) 455

Waiver of jury trial in pro
tempted murder was proper
trial court, where record refle
dant had filed written waive
and further showed that defe
questioned by trial judge in o
her waiver, that trial judge
rights she would have with ju
case, and that trial judge ha
her how jury trial compared
Johnson v State (1983, Ind) 45

Court which specified that
giving up certain enumerated
ing guilty sufficiently elici
waiver of trial rights by de
each of court's admonishment
by words "at trial," even if c
did not track wording of st
State (1985, Ind) 479 NE2d 53

Defendant was adequately
by pleading guilty, he was giv
jury trial, even though court
word "jury." People v Bangert
107 App Div 2d 752, 484 NYS2

§ 5. Statements in contex waiver form

Defendant's guilty plea was
intelligent, notwithstanding co
advise him explicitly, inter al
right to public and speedy tri
told him he was waiving his ri
trial to begin three days lat
ment, which he had signed,
been advised of his rights
speedy trial by jury, governing
require strict use of words

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