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*ALSO LICENSED IN MINNESOTA

November 27, 1989

Dear [REDACTED]

RE: Request for Advisory Opinion

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of November 16, 1989.

The Committee was of the opinion that the Code of Professional Responsibility does not directly address the situation you outlined in your November 16, 1989, letter. Some of the Committee members felt that Rule 1.11 of the Rules of Professional Conduct might have some applicability, but after discussing it further, the Committee reached the opinion that nothing in the Rules of Professional Conduct would prohibit you from participating in the hearings of the North Dakota Racing Commission.

We would, however, like to point out that there may very well be some rules and/or regulations under State law which govern a State appointee's conduct. You will have to determine whether there are any other applicable laws and/or regulations which would be applicable and govern your conduct in this situation. Also, one Committee member raised the point that in some situations appointees such as yourself are deemed to hold a quasi judicial position and may be governed by the Rules of Judicial Conduct. The interpretation of the Rules of Judicial Conduct are beyond this Committee's role. In any event, it was the opinion of the Committee that the situation you outlined in the November 16, 1989, letter does not raise a problem under the North Dakota Rules of Professional Conduct.


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This letter opinion is issued to you for advisory purposes only and is not binding on you, the Court's of North Dakota, the Disciplinary Board, Grievance Committees, or any other member of the Bar of the State of North Dakota.

Sincerely,

Paul F. Richard
Chairman-Ethics Committee
State Bar Association of North Dakota

84-09

[REDACTED]
[REDACTED]
November 16, 1989
[REDACTED]

Paul F. Richard
Attorney at Law, Chairman
SBAND - Ethics Committee
P.O. Box 6017
Fargo, ND 58108-6017

Re: Advisory Opinion

Dear Chairman Richard:

This request for an advisory opinion is submitted pursuant to our telephone conversation of this date wherein I inquired as to whether an opinion could be issued by the Committee prior to December 15, 1989.

The factual basis giving rise to my ethical concern is not directly related to my practice of law in that the action which I will be required to make or abstain from making arises by reason of my gubernatorial appointment to the North Dakota Racing Commission.

On December 15, 1989 the Racing Commission has scheduled a hearing to receive applications and evidence in their support for the issuance of an exclusive franchise to provide a simul-casting network which will establish a statewide parimutuel off-track betting pool. I am one of five gubernatorial appointees and my status as an attorney is in no way a requirement for that appointment.

Approximately six (6) months ago, my firm entered into a fee sharing arrangement with [REDACTED]. The other member of my firm, [REDACTED] deals directly with [REDACTED] of the [REDACTED] firm in this products liability matter.

I was informed last week by the Executive Director of the Racing Commission that one of the applicants has retained [REDACTED] to assist them in preparing and presenting their application to the Commission.

I would respectfully request the Committee's advisory opinion as to whether the fee sharing arrangement creates such a conflict of interest or appearance of impropriety as to preclude me from participating in the discussion and decision-making process regarding the pending applications, or barring

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disqualification, does it at a minimum require disclosure of the existence of the fee sharing arrangement with [REDACTED] firm?

In the event that the Committee can neither meet nor reach a decision by December 15, 1989, I intend to attend the hearing in order to benefit from the information that will be presented; however, at the commencement of the hearing, I will announce that I intend to abstain from all aspects of the decision-making process. While I would be greatly disappointed in not being able to participate in this very important decision, I feel that without the guidance of the Committee I would be best to err on the side of caution.

Respectfully,

[REDACTED]

[REDACTED]

[REDACTED]