

LO 90-01

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ATTORNEYS AND COUNSELLORS AT LAW  
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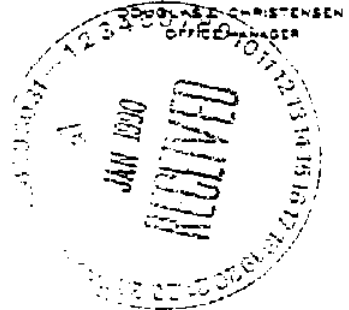
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ALSO LICENSED IN MINNESOTA

January 26, 1990

TELEPHONE  
701/232-8957  
TELEFAX  
701/237-4049



[REDACTED]

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of December 26, 1989.

The Committee did not feel that there was any particular ethical issue involved in your inquiry. The Committee cannot make a decision whether or not an attorney client relationship was established between your firm and [REDACTED]. Assuming for purposes of discussion, that no such relationship did exist, the Committee did not see where there was anything more that you could do in the matter.

On the other hand, if based upon the facts you have presented, one could construe that an attorney client relationship did exist, then you would be required to follow the requirements of Rule 1.16, North Dakota Rules of Professional Conduct, with respect to your withdrawal from representation. Again, as long as your withdrawal from representation, if an attorney client relationship did exist, was in conformance with Rule 1.16, the Committee did not believe that there would be any type of an ethical violation involved.

This letter opinion is issued to you for advisory purposes only and is not binding on you, the Court's of North Dakota, the

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Disciplinary Board, Grievance Committees, or any other member of  
the Bar of the State of North Dakota.

Sincerely,

A handwritten signature in cursive script, reading "Paul F. Richard". The signature is written in dark ink and is positioned above the typed name.

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

90-01

[REDACTED]  
[REDACTED]  
[REDACTED]  
December 26, 1989

Paul F. Richard  
SBAN Ethics Committee  
PO Box 6017  
Fargo, ND 58108-6017

RECEIVED  
DEC 29 1989

Re: [REDACTED]

Confidential, Discretionary  
Not to be Disclosed

Dear Mr. Richard:

As a young trial attorney, I have been presented with a rather perplexing problem. I enclose for your review a copy of the most recent letter that I received from [REDACTED]

Several years ago [REDACTED] was at one time represented by Attorney [REDACTED]. [REDACTED] was not happy with [REDACTED] representation and presented his facts to this office some time ago to which we indicated he may have a claim but that we were not in the business of representing claimants in attorney malpractice actions. We took steps to assist him in finding an attorney which included giving him names of attorneys around the State, providing him with the phone number for the State Bar Association, providing him with the phone number for the Association of Trial Lawyers of America, and obtaining names of from attorneys out of state to whom were represented by other attorney to us as attorneys who do legal malpractice. Although [REDACTED] presented his claim for relief to several different offices for their considerations, all turned him down and [REDACTED] eventually sued the matter by himself on a pro se basis. He spent several hours in the library at the County Court House researching the issues and developing his own case law. He has voluminous work wherein he would write memos to himself and also letters to several different sources.

Regarding his civil suit, if memory serves me right, he lost on a Summary Judgment Motion and then appealed such to the Supreme Court. The Supreme Court affirmed the trial court. [REDACTED] again contacted this office relative to his options and discussed the case at length with myself. I informed him that he could not sue [REDACTED] again on the same facts due to res judicata. He then sought avenues of criminal prosecution to which the States Attorney, [REDACTED] basically threw [REDACTED] out of his office and letting him know not to darken his door again.

[REDACTED] then came into the office again to discuss the case along with other pending matters, namely title opinions, that we were doing for him, and informed me that he intended to sue the State

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Bar Association for denying him his right to an attorney according to the 7th Amendment. I informed him that he was not entitled to an attorney unless there was a criminal matter to which there was jail time and he was the defendant. He then drifted on toward his claimed action for conspiracy to which he was going to add in all members of the North Dakota Supreme Court, [REDACTED] attorney, [REDACTED], and the trial court judge. I informed him that if he attempted that, I felt confident there will be several frivolous lawsuit counterclaims against him and he was potentially going to get stuck for their attorneys fees as well as costs. I also informed him that there was no way that I would represent him on any of those matters.

He persisted with his thought that he had still a claim against Attorney [REDACTED] as well as he should be criminally prosecuted. At all times that he was in this office, I informed him I would not represent him against any matter regarding [REDACTED]. After six or seven times that he was in the office, again rehashing the same facts to which I told him I would not represent him and as far as I was concerned, the matter was over, I told him that I did not want to talk to him about the matter anymore, it was a waste of my time and his money.

After we reviewed some abstracts for him to determine mineral ownership, he came in to talk about various judgments that appeared on the abstracts and he wanted me to go ahead and get the ones that are releasable released. I indicated to him that I would attempt to do that and then I asked him about whether or not he was going to pay his outstanding bill. He informed me that he was not going to pay such in that services were not rendered. I indicated to him that I wanted to know what he meant by that and he said a lot of the items were regarding the case of [REDACTED] to which I indicated to him while that is true, I told him whether or not he had a case and whether or not he should continue to pursue his matter and gave him my opinion as to whether he had additional claims against [REDACTED]. He then indicated to me that he was going to prove that I was his attorney of record and that I had to represent him on the [REDACTED] matter as well as give an expert opinion as to whether or not [REDACTED] committed malpractice.

Upon hearing that, I handed back to him all the papers that he had given me, and told him to leave the office and that I would never represent him in any matter again. He still wanted to talk about the matter to which at that time I got a staff personnel, [REDACTED], and had him sit in with the conversation wherein I told [REDACTED] again that I would not represent him on any matter of [REDACTED] and to leave the office. He finally did leave the office.

After receipt of the enclosed letter, I am at a complete loss as to what more to do to indicate to him that I do not intend to

Paul F. Richard  
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represent him and I am wondering if I can get a written opinion from the Ethics Committee as to whether or not I have any obligation to do so. I at this time have no outstanding matters with [REDACTED] and have filed no Notice of Appearance or litigation for or on his behalf. All that I tried to do for [REDACTED] was to find him an attorney in the malpractice action, and to give him advice on not to file suits with potential frivolous consequences. I am extremely upset with his backhanded tactics in trying to hook me into representing him on the [REDACTED] matter and the request for a written opinion is to document my file because I anticipate that eventually he will try to file some claim against me.

I would appreciate your assistance on this matter and I am available for questions at any time.

Sincerely, [REDACTED]

WAH:jm

Enclosure  
[REDACTED]

DEC 26 1989

100-10-21

December 20, 1989

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In reference to letter of December 6, 1989.

In regard to your opinion that my case versus [REDACTED] is over with and is done, I have told you that my opinion is that this case is not done.

It is common knowledge that all cases are to be tried and judged on its own merits.

The merits and history of facts that are on record of this case do show that the justified prosecution of [REDACTED] has never been performed at a trial by jury as prescribed by the 7th Amendment to the Constitution of the United States. For further information on this issue refer to my letter to you dated April 4, 1989, which does include a page from the "North Dakota Blue Book - 1981" and all of letter in general and all other letters I have submitted to your office.

As to you being outraged of my conduct for insisting that you must assist me as legal representative in this case versus [REDACTED] the records do show that [REDACTED] has received \$676.77 all relevant to the [REDACTED] case.

January 18th, 1985 \$145.00

April 3rd, 1985 210.00

October 6th, 1985 461.77

TOTAL PAID [REDACTED] \$816.77

Paid to [REDACTED]

November 18th, 1985 \$ 90.00

December 20th, 1985 19.37

Outstanding as of Dec. 18, 1989 529.33

Total for [REDACTED] \$ 638.70

For a Grand total of \$638.70 + \$816.77 = \$1,455.47

All relevant to the [REDACTED] case.

This does show that the [REDACTED] has been the attorneys of record on the case versus [REDACTED] and I have not used or hired any other attorneys since the case versus [REDACTED] originated.

[REDACTED] you have repeatedly stated that I do not have a legal right to have the representation of an attorney.

In the Appellee's Brief, Attorney [REDACTED] alleged that where a legal malpractice case involves issues of a complex legal nature which are not within the common knowledge of laymen, expert legal testimony is essential to support the plaintiff's claim that the attorney was negligent. Therefore evidence as to the degree of care and skill required of an attorney as well as any departure from that standard must be established by expert testimony.

My question is how was I supposed to provide that expert opinion when you refuse to hire to be that expert? That makes the allegation unconstitutional and also an act of discrimination and conspiracy.

I do not see why I should submit the repetition of the merits and history of facts. All these merits and history of facts of this case verses [REDACTED] have been submitted to the [REDACTED] office.

My letter of October 14, 1989 to Judge Erickstad has not been submitted to your office. I am enclosing that with this letter.

I am asking or requesting both [REDACTED] and your opinion on what statute of law the Supreme Court denied the amendments of the Constitution of the United States. And also on what rules did Judge Erickstad constitute in denying the constitutional amendments that he revamped the state judiciary into a Unified System and founding of the States Appeals Court.

The bottom line is [REDACTED] would know and did know that [REDACTED] did deprive me of over One Hundred Thousand Dollars in the five years that he was in possession of my property. That also did cause a loss of Twenty Thousand a year to [REDACTED] due to these true merits of this case. [REDACTED] did rob or steal from [REDACTED] Thirty Four Thousand Dollars from [REDACTED] and did illegally compensation [REDACTED] for that amount.

And as to the [REDACTED] being the attorney of record. Unless you present a petition or motion for a legitimate cause to be self disqualified to represent [REDACTED] to the conclusion of this case versus [REDACTED], you will represent me.

As to the statement by [REDACTED] if he would do this case he would have his license to practice law suspended.

Is that the commitment that the attorneys have to the Bar Association that if they represent a client in a malpractice case

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versus another attorney that they would lose their license to practice law?

You now have the hard choice, are you going to be intimidated by the Bar Association or are you going to be indicted by [REDACTED] for discrimination and conspiracy.

I will request that [REDACTED] and [REDACTED] be barred from practice.

As I have told you over and over, I will pursue this case versus [REDACTED] until the justified prosecution of [REDACTED] is performed.

I am fed up with the harassment from the attempted brain washing from all the members of the North Dakota Bar Association and will not condone or tolerate any more and I do believe all other people and citizens of North Dakota will not condone or tolerate the conspiracy to overthrow the democracy form of government that we did have and be governed by the dictatorship form of government by the minority group consisting of the members of the North Dakota Bar Association.

I request that you submit a legitimate petition or motion of disqualification or the acceptance to represent me. I request this response by the 28th day of December, 1989.

If you accept to represent [REDACTED] in this very trying case, we will proceed right after the first of the year, 1990.

If not I will proceed as pro se and as I have stated many times [REDACTED] will be prosecuted for robbing me of Thirty Four Thousand Dollars that he gave [REDACTED] and also the Five Thousand Dollars that [REDACTED] did aid and abet and was the cause. I did not

get the downpayment of that amount at the closing of the Contract for Deed the 20th day of February, 1979.

The records of the merits that are now history do show that [REDACTED] did prove the preponderance of evidence that Attorney [REDACTED] was negligent and that negligence was the proximate cause of the Thirty Four Thousand Dollars. That represented the value of use of my property that I lost after the 16th day of March, 1984, and also it was the negligence of Attorney [REDACTED] Was the proximate cause that I did not receive the Five Thousand Dollars down payment at the closing of the Contract for Deed the 20th day of February, 1979.

These History of Facts do not correspond with your opinion that I do not have a case versus [REDACTED].

To further prove my position on this issue, I will compare the issue of forcing you to represent me as a client.

Compare this issue with the issue of [REDACTED] forcing [REDACTED] to subsidize [REDACTED] with the value of use of [REDACTED] property equivalent to Thirty Four Thousand Dollars.

I do expect and request your acceptance to represent me in this case versus [REDACTED] or a petition or affidavit that would show a legitimate cause for self disqualification. I expect your response to this by the end of the year, 1989.

Another Issue: [REDACTED] did make the statement that if his firm would agree to represent [REDACTED] in this case versus [REDACTED] you would lose your license to practice law.

I never could find out what commitment the attorneys had to the North Dakota Bar Association. It appears that in this case

every member of the bar would know and did know that [REDACTED] had goofed due to his inflated ego and the North Dakota Bar Association did not want to be embarrassed by the obvious misrepresentation of the law and did believe that the justified prosecution of [REDACTED] must be prevented as that would be a disgrace to all of the members of the North Dakota Bar Association.

If you do not file for a legitimate request for disqualification and do represent [REDACTED] in this case versus [REDACTED], the merits of this case will take a lot of time to discuss.

Including the fee for me and for you due to the fact that the defense for [REDACTED] is frivolous. According to the North Dakota Century Code 28-26-01 [REDACTED] by being forced to act as pro se should receive a reasonable amount for his time. I expect Ten Dollars an hour and eight hours a day commencing the 16th day of March, 1984, until I get paid would be very reasonable and also according to the allegation by [REDACTED] that pursuant to Rule 38 of the North Dakota Rules of Appellate Procedure, [REDACTED] should receive double indemnity.

It is my opinion that if [REDACTED] and [REDACTED] do not have a legitimate cause for disqualification they will leave themselves open to inditement along with the rest of the members of the North Dakota Bar Association that enjoined forces to prevent the justified prosecution of Attorney [REDACTED]

I will be awaiting your reply.

Concerned Citizen,  
[REDACTED]  
[REDACTED]  
[REDACTED]

A message to the North Dakota Bar Association and its members that have been and are preventing the justified prosecution of Attorney

This message is being stapled to some of the clippings I have found in the newspaper.