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December 26, 1989

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DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

[REDACTED]
Dear [REDACTED]

RE: Advisory Opinion Regarding the Application of Rule 4.2
N.D.R.P.C.

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of December 15, 1989.

The Committee was of the opinion that once an attorney reaches the conclusion that the Rule 8.3(a) considerations are met, the attorney has an obligation to report the violation. The Rule does not designate any timing with respect to when the report must be made and simply indicates that once the attorney reaches a conclusion that a basis for reporting another lawyer under Rule 8.3(a) exists, the report shall be made. The Committee was of the opinion that the timing of the report is not dictated by the status of the proceedings pending before the Court. In other words, once a lawyer has knowledge that another lawyer has committed a violation of these Rules, which violation raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, that attorney is under an obligation to report the violation.

The Committee would like to point out that the inquiry is two fold. You must first reach the conclusion that a violation of the Rules of Professional Conduct has occurred. The second inquiry is whether or not the violation of the Rule raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. The Committee would

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also call your attention to the third paragraph in the comments to Rule 8.3 which makes it clear that not every technical or insubstantial violation needs to be reported.

The second question you asked concerned whether there was an obligation to report other lawyers and/or judges who refuse to report the attorney who violated the Rules. The Committee is reserving comment on this aspect of your question until additional research can be done. It is the Committee's intent to issue a formal opinion on this question which will be reported in the Gavel. Hopefully, that research and report will be completed in January or February of 1990.

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