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DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

May 9, 1990

[REDACTED]



Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the question raised in your letter of April 18, 1990.

Your question was whether the county court as a result of the Legislature's enactment of N.D. Cent. Code §40-18-15.1 comes within the definition of "in the jurisdiction in which the lawyer holds the prosecutorial appointment", as set forth in Rule 1.8(j)(1), Rules of Professional Conduct, which would preclude one who is a city prosecutor from defending those persons charged in county court with violations of state statutes? It is the opinion of the Committee that N.D. Cent. Code §40-18-15.1 does extend the reach of Rule 1.8(j)(1). Consequently, the individual holding the prosecutorial appointment for the city could not defend cases in county court where the individual is expected to prosecute city cases which are transferred to county court.

I should point out that the Committee was of the view that the contract with the city could exclude any obligation to prosecute the cases which are transferred to the county court pursuant to §40-18-15.1. The statute does appear to contemplate that the city could contract with the county to prosecute those particular cases. If those cases were excluded from the appointment as municipal attorney, then the Committee does not feel that there would be a prohibition for the municipal attorney to defend cases in county court in regard to defendants charged with violating State or county ordinances/statutes.

[REDACTED]
May 9, 1990
Page 2

I would like to point out that the foregoing opinion was not a unanimous decision of the Committee but a majority of the Committee members present concurred in the opinion. Additional research on the issue is being conducted. If for some reason the research causes the Committee to alter its opinion, you will be informed at that time.

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

[REDACTED]

April 18, 1990

Mr. Paul F. Richard
Attorney at Law
Post Office Box 6017
Fargo, North Dakota 58108

Dear Mr. Richard:

There is a possibility that a member of our firm may be appointed as a municipal attorney. Should that occur, our office then would handle the prosecution of cases in municipal court.

Currently the members of our firm do criminal defense work in county court and district court on behalf of fee paying clients, and also on behalf of indigent defendants when either the county judge or district judge finds it necessary to appoint an attorney. Rule 1.3(j) of the Rules of Professional Conduct and the Comment thereto make it quite clear that "a part-time municipal prosecutor" may defend "person(s) charged with crime to be tried in another court...". As the Rule is stated, it prohibits defense "in the jurisdiction in which the lawyer holds the prosecutorial appointment".

When defendants in municipal court want a jury trial, they have their cases transferred to county court pursuant to N.D.C.C. §40-18-15.1 in which cases the city provides the prosecuting attorney. Therefore, on those occasions the municipal prosecutor will be prosecuting municipal cases in the county court, though acting as municipal attorney. (This would also occur on municipal court appeals to county court under N.D.C.C. §40-18-19.)

Our question then in seeking an ethics opinion from your committee then is "Does the county court as a result of N.D.C.C. §40-18-15.1 come within the definition of 'in the jurisdiction in which the lawyer holds the prosecutorial appointment', thus precluding one who is a city prosecutor from defending those persons charged in county court with crimes by the state's attorney's office for violation of state statutes?" Quite obviously, a city prosecutor wouldn't defend a person in county court for violating a city ordinance, and our question applies only to those persons charged with violating state statutes.

Mr. Paul F. Richard
April 18, 1990
Page Two

It appears to us that the Rule does not prohibit a municipal prosecutor from defending crimes charged by the state prosecuted in county or district court as we assume the intent of the Rule is to allow municipal attorneys to practice in those other courts, particularly in the less populous areas of our state where there are few attorneys, and therefore that the court in which the lawyer holds the prosecutorial appointment would only be the municipal court and not include county court.

Should the appointment come to pass, we will be under some short time constraints and would appreciate your committee's response as promptly as possible.

Thank you.

Sincerely,



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DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

June 27, 1990

Dear [REDACTED]

On June 14, 1990, the Ethics Committee further considered your request for opinion dated April 18, 1990. After additional research, the Committee has found no basis to change its original opinion. Accordingly, the Ethics Committee will stand by the opinion issued to you on May 9, 1990.

If you have any questions concerning this, do not hesitate to give us a call.

Sincerely,

Paul F. Richard
Chairman-Ethics Committee
State Bar Association of North Dakota
cc: Sherry King