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SERKLAND, LUNDBERG, ERICKSON, MARCIL & MCLEAN, LTD.

ATTORNEYS AND COUNSELORS AT LAW

6 ROBERTS STREET

PO BOX 607

FARGO, NORTH DAKOTA 58108-607

NORMAN G. TENNESON, PRES.

CHESTER J. SERKLAND

LOWELL W. LUNDBERG

ARMOND G. ERICKSON

JACK S. MARCIL

RONALD H. MCLEAN

ROGER J. MINCH

PAUL F. RICHARDS

STEVEN K. AARRE

MAUREEN HOLMAN

BRAD A. SNOOK

LADONNE R. VICK

ALSO LICENSED IN MINNESOTA

TELEPHONE

TO 401-5957

TELEFAX

TO 401-4049

DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

June 27, 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 June 6, 1990.

The Committee has considered your request for opinion and is of the conclusion that you do have a duty to report the violation of the Rules of Professional Responsibility even though you feel confident that it will be reported by other means. We enclose for your review a copy of the Ethics Committee's Formal Opinion Number 42 which was recently published in the Gavel.

We would refer you to the In Re Himmel case cited in the opinion. In that case, the attorney was suspended from the practice of law for failing to report a violation of the rules by another attorney in a situation where his client did not want him to disclose the matter. Consequently, the Committee is of the opinion that Rule 8.3 would require a report if you have knowledge of an attorneys conduct which raises a "substantial question" concerning the lawyers "honesty, trustworthiness, or fitness of a lawyer in other respects".

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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June 27, 1990

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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
cc: Sherry King

90-05

June 6, 1990

PERSONAL AND CONFIDENTIAL

Chairman - Ethics Committee
North Dakota State Bar Association
P.O. Box 6017
Fargo, ND 58108

Dear Mr. Richard:

I have become aware of a situation involving a local Devils Lake lawyer who took substantial money from a Trust. I became aware of this because of my representation of one of the beneficiaries of the Trust. In any event, I am aware of the fact that under our Disciplinary Rules a lawyer who has knowledge of a violation of the Disciplinary Rules by another lawyer has a duty to report such violation. Incidentally, I am a member of Inquiry Committee East and I have been a member of that committee for several years.

The beneficiary whom I represent is also represented by another attorney who lives in the same state where the beneficiary is located. That attorney is going to proceed forthwith to send information relating to this violation of the Disciplinary Rules to Vivian Berg so I have been assured that this complaint will be reported. I guess my question is, do I have any duty to report this violation of the Disciplinary Rules when I know that a complaint will be reported without my involvement. I also happen to be a personal friend of the lawyer involved and that is another reason why I do not want to report this violation. I would appreciate a letter from you advising that I would not have a duty to report this violation in view of the fact that I have been assured that it is going to be reported by the attorney from out-of-state.

Please call me if you have any questions in connection herewith.

Thank you for your consideration in this matter.

Respectfully,