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DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

*ALSO LICENSED IN MINNESOTA
March 23, 1991

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of March 11, 1991.

It is the opinion of the Committee that Rule 3.3(d) addresses the issue that you raised in your letter. You should also review the comments to the Rule. Rule 3.3(d)(1) provides that a duty to convince the client to consent to disclosure does not exist when the lawyer withdraws in accord with Rule 1.16. As we understand the situation, your representation of the client ended long ago and you just recently discovered the information. The comments to the rule indicate that where "a lawyer, after having properly withdrawn from representation of a client; comes to know that false evidence was offered, that lawyer never becomes obligated under this rule to disclose or to attempt remonstration. However, that lawyer may have obligations under the other laws, such as general statutes requiring the reporting of a crime, to take some action. In this regard, the lawyer must also consider the effect of other factors, such as the attorney-client privilege."

The Committee's opinion is that you would have no affirmative obligation under the Rules of Professional Conduct to disclose or to attempt a remonstration since you have already withdrawn and the false testimony was discovered after your withdrawal. The Committee was unaware of any statute which would require you to report perjury, and if one does exist, you would have to keep in mind the attorney-client privilege. In any event, our function is

[REDACTED]
March 25, 1991

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to comment on the Rules of Professional Conduct and not an unrelated statute.

In summary, the Committee is of the opinion that under the Rules of Professional Conduct there is no affirmative obligation on your part to disclose the information or attempt to get your client to effect a remonstrance of the testimony.

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
cc: Sherry King

MAR 28 1991
FILED

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[REDACTED]

March 11, 1991

Mr. Paul F. Richard
SERKLAND, LUNDBERG, ERICKSON,
MARCIL & McLEAN, LTD.
10 Roberts Street
P.O. Box 6017
Fargo, ND, 58108

Dear Paul:

RE: Ethics Question

I was recently engaged to represent a lady in her divorce action. During my initial conference with her we discussed her financial situation. She indicated to me at that time that she had no money, and even had to borrow the money to pay my retainer fee.

As a result of that meeting I prepared a Petition for Waiver of Fees in order to file her case in District Court in Fargo. The Petition was granted and the case was filed without her having to pay a filing fee. About the time she terminated my services, and sought another attorney, I became aware that she had a large sum of money from an inheritance in a bank out of town. I did not get this information until some time into the case.

As a result of discovering that she did indeed have substantial money, I now feel I may have a problem with professional ethics. My question is this: Do I maintain the confidentiality of my client, or do I inform the Court that she misrepresented her financial condition on her sworn statement which accompanied my Motion to Proceed In Forma Pauperis? Thanking you in advance for any guidance you can give me with this question.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RECEIVED
MAR 12 1991

Serkland, Lundberg, Erickson
Marcil & McLean, Ltd.