

LA 91-04

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

ATTORNEYS AND COUNSELORS AT LAW
10 ROBERTS STREET
P.O. BOX 6017

FARGO, NORTH DAKOTA 58108-6017

NORMAN G. TENNESON (1898-1962)
CHESTER J. SERKLAND
LOWELL W. LUNDBERG
ARMOND G. ERICKSON
JACK G. MARCIL*
RONALD H. MCLEAN*
ROGER J. MINCH*
PAUL F. RICHARD*
STEVEN K. AAKRE*
MAUREEN HOLMAN*
BRAD A. SINCLAIR*
LADONNE R. VIK*
JANE L. DYNES*

TELEPHONE
701/232-8857

TELEFAX
701/237-4049

DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

*ALSO LICENSED IN MINNESOTA

April 12, 1991

[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 March 22, 1991.

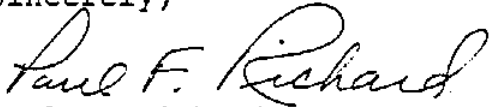
It was the opinion of the Committee that the requirements of an Rule 8.3, North Dakota Rules of Professional Conduct, to report certain violations of the Code of Professional Conduct by another attorney is qualified by the requirements of Rule 1.6, North Dakota Rules of Professional Conduct. As you can see from Rule 8.3, (c), Rule 8.3 does not require disclosure of information protected by Rule 1.6. The Committee is of the opinion that you should analyze Rule 1.6 to determine whether or not it is applicable to the information with which you are concerned. The Committee is also of the view that you should document in your file your conclusions as to why you believe Rule 1.6 is applicable to the information in question.

You will note that Rule 1.6 requires the lawyer to not reveal or use to the disadvantage of a client, information relating to representation of the client unless required or permitted to do so by Rule 1.6. The Committee's opinion is that the obligation to protect information under Rule 1.6 has priority over the requirements of disclosure under Rule 8.3. The Committee would like to point out to you, however, the comments to Rule 8.3 which provide that a lawyer who is excused from reporting a violation of the Rules of Professional Conduct where the making of a report

would involve the reporting lawyer in a violation of Rule 1. 6 "should encourage the client to consent to disclosure where prosecution would not substantially prejudice the client's interest." Consequently, you should encourage your client to authorize disclosure unless you determine in your judgment that it would substantially prejudice your client's interest.

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,

A handwritten signature in cursive script that reads "Paul F. Richard".

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

cc: Sherry King