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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
701/232-8957
TELEFAX
701/237-4049

DOUGLAS E. CHRISTENSEN
OFFICE MANAGER

*ALSO LICENSED IN MINNESOTA

May 8, 1991

[REDACTED]

Dear [REDACTED]

RE: SBAND Ethics Committee

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of May 1, 1991.

The Committee was of the opinion that the money should be returned to the party from whom you received the payment. Under the facts you described in your letter, the funds would be returned to the third party from whom you received the personal check for \$500.00. The Committee was also of the opinion that the money should be returned to the third party minus the costs and fees which you have earned. If you elect to forego your fees and costs, that is a matter for you to decide, but the Committee was of the opinion that you would be entitled to retain your costs and fees. It is apparent that the third party from whom you received the payment does not dispute that you should be retaining costs.

We call your attention to Rule 1.15 of the North Dakota Rules of Professional Conduct. As you can see, the Rule does require that funds received from clients or third parties be maintained separate from the lawyers own property, and the lawyer must be able to account for those proceeds. The comments to the rule indicate that a lawyer should hold the property of others with the care required of a professional fiduciary. In summary, the Committee is of the opinion that under the facts that you described, the funds in question, minus your costs and applicable fees, should be returned

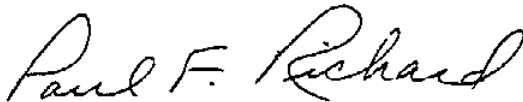

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to the third party from whom you receive payment unless that party directs otherwise.

This letter opinion is issued to you for advisory purposes only and is not binding on you, the Courts of North Dakota, disciplinary board, grievance committees, or any other member of the Bar of the State of North Dakota.

Very truly yours,



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

[REDACTED]

May 1, 1991

Paul F. Richard, Attorney at Law
10 Roberts Street
Fargo, North Dakota 58102

Re: Ethics Committee

Dear Paul:

Pursuant to our telephone conversation of April 30, 1991, I am writing you in the hope that I can get the following problem resolved.

I was retained by a federal prisoner being housed at the North Dakota State Penitentiary for some appeal work to be done in federal district court. I was merely to appear in court on behalf of the inmate. However, the inmate had a third party send me a minimum retainer of Five Hundred Dollars (\$500.00) for services to be rendered. I received and deposited the retainer (in the form of a personal check) on April 15, 1991, and verified with the bank that the check cleared.

As it turns out, federal district denied the inmate's motion to proceed on appeal in forma pauperis. On April 30, 1991, I received a letter from the inmate advising me that he did not see how I could be of any help to him. He requested that I return all his legal papers and that I was also to send him the Five Hundred Dollar (\$500.00) retainer.

I contacted the third party yesterday. I told the third party that I had visited the inmate only once and that I had done no work for the inmate. However, I did make copies of his pleadings. This third party (lives out of state) expressed the desire that I was to return the retainer to him minus any costs I incurred, including the long distance phone call.

My questions to the committee are:

1. To whom should the retainer be returned? and
2. Should the retainer be returned minus costs incurred?

I would appreciate as quick an answer as possible. Thank you for your time.

Sincerely yours,
[REDACTED]