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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 March 28, 1991.

It was the opinion of the Committee that there is nothing in the Rules of Professional Conduct which would prohibit the obtaining of interim orders in domestic relation cases on an ex-parte basis under Rule 8.2, North Dakota Rules of court, even if the other side is represented by counsel. The only rule which even addresses the issue of ex-parte communications with the Court is Rule 3.5, North Dakota Rules of Professional Conduct. Rule 3.5 simply prohibits contact with the Court which is prohibited by law. Rule 3 of the North Dakota Rules of Judicial Conduct also discusses ex-parte communications with the court. Rule 3(A)(4) prohibits ex-parte communications with a Court except as authorized by law. Clearly, Rule 8.2, North Dakota Rules of Court, serves as an authorization for a party to approach a Court ex-parte for purposes of an interim order in domestic relations cases.

The Committee did not feel that there was any qualification on the ability to obtain ex-parte orders due to the fact that the other party may be represented by an attorney. While there does not appear to be any rule that would require a lawyer seeking an ex-parte order to inform the Court that the opposing party is represented by an attorney or contact the attorney, the Committee

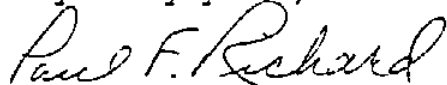

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was of the view that depending on the circumstances of the case, it would be appropriate to notify an opposing attorney of the intent to seek an ex-parte order. Again, depending upon the circumstances of each case, that may or may not be feasible.

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

91-07

[REDACTED]

March 28, 1991

Mr. Paul F. Richard, Chairman
SBAND Ethics Committee
PO Box 6017
Fargo, ND 58108-6017

Dear Mr. Richard:

I am writing to request a formal opinion from the Ethics Committee. I have talked with Vivian Berg and she has advised me that no current opinion exists addressing my question but that she has received phone calls in the past concerning the same issue.

Rule 8.2 of the North Dakota Rules of Court provide that the District Court may issue an Interim Order in domestic relation cases. This rule the orders to be issued either ex parte or upon notice.

My question is whether or not the court may issue the order ex parte when an attorney has already appeared on the other side? Is it unethical for an attorney to request the order ex parte when there has been an appearance? Can the attorney advise the Court of the representation and then place the burden upon the Judge as to whether the order should be issued ex parte or only after notice and hearing?

Thank you for your consideration of this matter. There is no urgency in responding but this has become a recurring problem.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

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Conrad, LeRoy E. Esq.
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