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RECEIVED
DEC 1991
3272829203

ALSO RECEIVED IN MINNESOTA
December 3, 1991

[REDACTED]

Dear [REDACTED]

RE: November 8, 1991 Request for Opinion

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of November 8, 1991.

It was the opinion of the Committee that an agreement on your part to not disclose the information to your client would be a violation of your obligations under Rule 1.4, North Dakota Rules of Professional Conduct, unless one of the two following conditions were met:

1. There was a Court Order issued limiting access to the information or otherwise mandating that you not reveal the information to your client; or
2. Your client gave his informed consent to the restriction on disclosure of the information. I would point out that the Committee was of the view that it would be difficult to obtain the informed consent of your client because your client would not know the nature of the material. Thus, while it may be possible to obtain the consent of your client to such an agreement with the State, the Committee was of the view that it might be impossible to get true informed consent from your client.

This letter opinion is issued to you for advisory purposes only and is not binding on you, the Courts of North Dakota, disciplinary


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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

cc: Sherry King

VIA FAX

RE:

Dear Sherry:

I spoke with Paul Richard, Chairman of the SBAND Ethics Committee yesterday. As I explained to Mr. Richard, I was appointed by U.S. [REDACTED] represent prisoner [REDACTED] on a civil rights action against the State Penitentiary and some of its employees. During the course of the litigation, I served a discovery request upon the State of North Dakota. The State has expressed some concern about releasing some documents because of the fear that this information would be made known to the general prison population. Therefore, they have asked to attach some conditions to the disclosure of this information; namely that I not reveal some of the information to my client.

I have some real serious problems with this condition. I have recently sent a letter to Assistant Attorney General [REDACTED] regarding this matter. I am enclosing a copy of my letter to him. Although I understand the States' concern about the dissemination of this information, I am even more concerned about fulfilling my ethical obligations to my client. As I previously stated, I was appointed to represent [REDACTED] by Magistrate Klein.

Mr. Richard informed me that he would be able to arrange a telephone conference with the members of his committee to discuss this matter and to give me an opinion. Therefore, I would ask that you forward this information to Mr. Richard and get back to me as quickly as possible regarding the Committee's position on this matter. Thank you.

Very truly yours,

[REDACTED]

November 4, 1991

[REDACTED]
Assistant Attorney General
State Capitol
600 East Boulevard
Bismarck, ND 58505-0040

RE: [REDACTED]

Dear [REDACTED]

I have received your letter of November 1, 1991. Although I can understand the concerns you have releasing some of this information to [REDACTED], I hope you appreciate the ethical quandry you have placed me in. When Magistrate Klein appointed me to represent [REDACTED] I became obligated to represent him to the best of my ability. Part of that obligation includes the responsibility to fully and freely communicate with [REDACTED]

Rule 1.4 of the North Dakota Rules of Professional Conduct states:

- (a) A lawyer shall make reasonable efforts to keep a client reasonably informed about the status of a matter. A lawyer shall promptly comply with a client's reasonable request for information.
- (b) A lawyer shall explain matters related to the representation to the extent reasonably necessary to permit the client to make informed decisions.

The conditions placed upon the transmittance of information to my client causes me some concern in light of my ethical obligation. Although I do not find your conditions unreasonable, I am unable at this time to accept them. In light of the quandry I am finding myself in, I have contacted Paul Richard who is head of the SBAND Ethics Committee to discuss the matter with him. I have also contacted Vivian Berg to discuss the matter with her.

As soon as I hear from them, I will get back to you. Thank you.

Very truly yours,
[REDACTED]
[REDACTED]