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March 12, 1992

[REDACTED]

RE: Ethics Committee Advisory Opinion

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letter of February 20, 1992.

The Committee is of the view that under Rule 1.10, North Dakota Rules of Professional Conduct, any restriction with respect to the representation of the father (Party B) that might be applicable to the firm would be applicable to you as well, even though you may not have been a member of the firm at the time it represented the mother (Party A). In other words, if the firm, under the Rules of Professional Conduct, would be precluded from representing the father (Party B), so would you.

Further, the Committee is of the opinion that you and your firm could only represent the father (Party B) if you can fully comply with the requirements of Rules 1.6 and 1.9. Your letter does not give the Committee sufficient information to determine whether or not there may be some information that was acquired in the firm's earlier representation of the mother to give rise to a conflict of interest under Rules 1.6 and 1.9. Clearly, information acquired in representation of the mother could not be utilized to advance the cause of the father. Therefore, unless you and the firm can fully satisfy yourselves that you are not violating Rules 1.6 and 1.9 in

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the representation of the father, you should not undertake such representation.

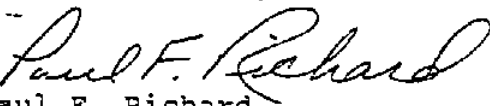
Of course, Rule 1.9 does permit you to seek the consent of the mother (Party A) to represent the father in the current proceedings. The comments to Rule 1.9 clearly indicate that in order to obtain such consent, you would have to divulge to the mother the full circumstances surrounding your representation of the father and also your intended role on behalf of the father. That, in and of itself, may create problems in regard to divulging information that the father does not want disclosed. Perhaps the father has not indicated to the mother what his intentions are in regard to visitation. Consequently, you would have to consult with the father before you could even approach the mother to obtain consent.

In summary, the Committee saw many pitfalls to representing the father in these proceedings when the firm had previously represented the mother. On the other hand, if you can fully comply with the requirements of Rules 1.6 and 1.9 or obtain the consent of the mother in the manner dictated by Rule 1.9, you and the firm could represent the father. The general consensus of the Committee, however, was that based upon the limited information that we have from your letter, representation of the father may not be advisable.

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,

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

  
Paul F. Richard  
Chairman, Ethics Committee  
State Bar Association of North Dakota  
PFR/skb

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BY DISCIPLINARY  
COUNSEL  
FEB 21  
DISCIPLINARY BOARD

[REDACTED]

February 20th, 1992

Vivian E. Berg, Staff Counsel  
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P.O. Box 2297  
Bismarck, ND 58502-2297

Re: Conflict of Interest

I would like an opinion as to whether it would be a conflict to represent a client in the following circumstance:

Party A: mother of child, has custody  
Party B: father of child

My firm represented the child in a name change petition brought by Party A, which party B successfully resisted. This representation was several years ago, before I was a member of the firm, so I had no involvement.

Party B, currently a client of mine, wants to have an order establishing visitation. He already voluntarily pays child support. May I represent Party B in this visitation motion?

I call your attention to the comments to Rule 1.9, N.D. Rules of Professional Conduct.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]