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March 12, 1992

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota has addressed and discussed the questions raised in your letters of February 5, 1992, and February 24, 1992.

The Ethics Committee is of the opinion that Rule 4.2 addresses the issues that you raised. The Committee is of the opinion that Rule 4.2 precludes a lawyer representing a claimant from having direct contact with representatives of the insurance company without prior approval of the defense counsel. Consequently, if defense counsel has been appointed by the insurance company, you should obtain the consent of that defense counsel prior to having direct communications with the company's claims person.

This letter is issued to you for advisory purposes only and is not binding on you, the courts of North Dakota, the 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
Paul F. Richard
PFR/skb

92-04

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
701 746-7338

February 5, 1992

Mr. Paul Richards
CHAIRMAN OF ETHICS
COMMITTEE
State Bar of North Dakota
10 Roberts Street
P.O. Box 6017
Fargo, ND 58108-6017

Re: Advisory ethics opinion

Dear Mr. Richards:

On behalf of the [REDACTED], I am writing you to request an ethics opinion concerning Rule 4.2 of the Rules of Professional Conduct and other applicable rules.

Essentially, the factual background which we desire an opinion on concerns the practice of talking with claims personnel of a liability insurance company which is providing a defense and possible payment of a claim to its insurers. We have recently been requested by insurance defense counsel to not send copies of letters sent to the insurance defense counsel to the claims manager or the claims department of the respective insurance company, and only to deal directly through the insurance defense counsel's office.

Previously, it has been our custom and practice from time to time to contact the insurance company directly in order to facilitate settlement negotiations.

Our review of the Rules of Professional Conduct would indicate that the only provision against contacting another person are the provisions contained in Rule 4.2 which deal with communications with a party known to be represented by counsel.

Thus, we are requesting an opinion that outlines the definition of the word party, i.e. does that include the insurance company; second, whether the Rules of Professional Conduct prohibit a direct communication with a claims department of an insurance company during the course of representation of our clients; and

Mr. Paul Richards
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third, whether it is a violation of the Rules of Professional Conduct to send copies of materials and letters which are being sent to the insurance company's defense counsel directly to the claims department.

Our review of Rule 4.2 and the comments, including the last sentence contained in the Comments Section, creates an ambiguity which needs resolution.

Again, I want to thank you for your prompt attention to this matter. If you have any questions or comments with regard to this matter, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

A thick, black horizontal bar redacting the signature.A large, irregular black block redacting the address and contact information.A thick, black horizontal bar redacting a line of text.