

LO 92-05

FOUNDED IN 1888
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 1898-1982
CHESTER J. SERKLAND — Retired
LOWELL W. LUNDBERG
ARMOND G. ERICKSON
JACK G. MARCIL*
RONALD H. MCLEAN*
ROGER J. MINCH*
PAUL E. RICHARD*
STEVEN K. AAKRE*
MAUREEN HOLMAN*
BRAD A. SINCLAIR*
LADONNE R. VIK*
JANE L. DYNES*

TELEPHONE
701/232-8957
TELEFAX
701/237-4048

GARY A. ROCKNE
OFFICE MANAGER

*ALSO LICENSED IN MINNESOTA

April 3, 1992

[REDACTED]

RE: Request for Ethics Committee Opinion dated March 24, 1992

Dear [REDACTED]

The Ethics Committee of the State Bar Association of North Dakota considered your March 24, 1992, request for opinion at its meeting held April 2, 1992.

The Committee agrees with your conclusions in regard to the applicability of Rule 1.10 of the North Dakota Rules of Professional Conduct. If you review the comments to the rules, it is clear that the term "firm" includes legal service organizations. As such, a conflict on the part of one of the lawyers employed by Legal Assistance of North Dakota, Inc., would disqualify the organization.

The Committee would like to point out the comments to Rule 1.10, which discuss the applicability of the rule in relationship to legal service organizations. You will note that the comments indicate that:

Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyer should be treated as associated with each other can depend on the particular rule that is

Ms. [REDACTED]
April 3, 1992
Page 2

involved, and on the specific facts of the situation.

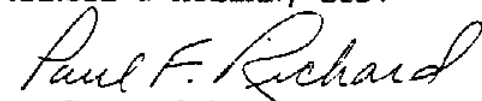
It is our understanding that [REDACTED], is not organized into separate units, so that this concept may not be applicable. Even if it was, you would have to evaluate each situation on a case-by-case basis to determine whether or not the imputed disqualification rule is applicable.

We would also point out to you the provisions of Rule 1.10(d) which provides that the imputed disqualification concept may be waived by the affected client's consent after consultation. Consequently, [REDACTED] could represent the potential client if you have the consent of the purchasers of the real and personal property. Obtaining that consent could create some problems in that you would, obviously, have to divulge to the purchasers the full circumstances of your proposed representation of the former owner and your intended role on behalf of the former owner. That, in and of itself, may create problems in regard to divulging information that the former owner does not want disclosed. In any event, you should be aware that the rule does provide for waiver of the imputed disqualification with the affected client's consent after consultation.

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
Chair, Ethics Committee
State Bar Association of North Dakota
PFR/skb
cc: Sherry King

92-05

[REDACTED]

March 24, 1992

Paul Richard, Chair
Ethics Committee
P.O. Box 6017
Fargo, ND 58108-6017

Dear Paul:

A potential client has applied to [REDACTED] for services. Two years ago [REDACTED] represented him in a consumer matter. Since that time a new attorney was hired. When the applicant came back in with other consumer problems, it was discovered that the new attorney had represented parties who would be directly adversely involved if [REDACTED] accepted the case.

The specific facts are as follows: The applicant lost his land through foreclosure. When he wouldn't move voluntarily, some of his personal belongings were confiscated by the sheriff and placed in a storage at a local privately owned storage company. The applicant couldn't and wouldn't pay the bill. He litigated to regain his land, but was unsuccessful. The personal property in storage was to be sold at auction, however [REDACTED] intervened on his behalf because the company was not following correct procedure in the sale. The sale was halted. Ultimately, approximately 1 year later, the property was correctly noticed and sold. Previous to the sale the company attempted to set up a payment plan for the applicant, but he declined saying the original placement was wrong and he shouldn't have to pay.

Shortly thereafter he recontacted [REDACTED] wanting assistance in regaining the personal property still on the land, including personal papers and photos, as well as larger pieces of property such as some machines and vehicles. The value is relatively minimal.

The new attorney on staff in the [REDACTED] Law office had represented the purchasers of the land, which included the personal property contained thereon. The applicant wants all of his personal property returned to him. He is not interested in monetary relief.

The applicant was denied services by [REDACTED] and referred as a conflict to the [REDACTED]. Numerous contacts were made attempting to locate an attorney to represent the applicant.

Administrative Office:

Administration
State Support Project
Private Bar Project


A United Way Agency

[REDACTED]

The best the [REDACTED] could do was get an initial interview with one private attorney. That attorney then declined to accept the case, which, to that attorney, had questionable merit.

I believe that at least in part the inability to locate pro bono counsel is due to the visibility of the applicant, his position with regard to his rights and his perseverance regarding those rights.

The Model Code of Professional Responsibility in Rule 1.10 - Imputed Disqualification has direct application. As I consulted with the attorney in the office we all agreed that 1.10(b) is clear. [REDACTED] must disqualify itself.

Because of the dynamics of this situation I would greatly appreciate even an advisory letter on this issue.

If you have any questions or concerns please feel free to contact me.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]