

92-06 ETHICS

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May 28, 1992

Dear [REDACTED]

RE: May 8, 1992, 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 May 8, 1992.

In your letter you raised three specific questions. The Committee's responses to each of your questions are as follows:

1. If you have an obligation to report attorney X to the State Bar based on the information that you have as to his conduct?

ANSWER: The Committee was of the opinion that based upon the information set forth in your letter, that you do have an obligation to report attorney X's conduct. The Committee was of the view that you should secure a statement or affidavit from your client to support the complaint. We call to your attention, however, that the duty to report does not require the disclosure of information which is otherwise protected under Rule 1.6, North Dakota Rules of Professional Conduct. Thus, if you conclude that the information is confidential under Rule 1.6, it does not have to be reported. On the other hand, we would point out that Rule 1.6 does permit disclosure of information with client consent after consultation.

2. If you tell client A to report X, has your obligation been fulfilled as to reporting the conduct of X?

ANSWER: The Committee is of the opinion that a client report of the conduct does not fulfill the obligation of the attorney who is aware of the misconduct. Along this line we would refer you to formal Ethics Opinion No. 42, a copy of which is enclosed.

3. Do you have to do any further investigation concerning the conduct of attorney X before reporting him, if you are required to report him?

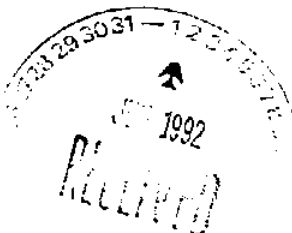
ANSWER: The opinion of the Committee was that you do not have a duty to further investigate the matter but would suggest that you secure a signed statement or affidavit from your client to assure that you have support for the factual basis that she is alleging.

If you would like to discuss this further, please do not hesitate to submit further inquiries to the Committee.

Very truly yours,

*Paul F. Richard*  
Paul F. Richard, Chairman  
Ethics Committee State Bar  
Association of North Dakota

cc: Sherry King



[REDACTED]

May 8, 1992

Paul F Richard, Chair  
Ethics Committee  
Box 6017  
Fargo, N D 58108-6017

Dear Mr Richard,

I request that the Ethics Committee provide me with guidance in the following situation:

Client "A" went to attorney "X" for a criminal action which was pending in Colorado. X advised A on this subject and billed him for the services. While A still owed to X about \$550 for fees on the criminal case, A and his wife B decided to file bankruptcy. A & B went to attorney X to file their bankruptcy. X did not list himself as an unsecured creditor for the \$550. A & B paid to X \$650 for services on the bankruptcy and A still owed to X the \$550 on the fees for the criminal case.

A & B received a federal tax refund check, after they had paid for the bankruptcy, but before X had forwarded the papers to the Federal Court for filing. X did not inform A and/or B that he was an unsecured creditor. The refund check was for \$500 plus and this check was taken to X. X had A pay him \$265 of this sum on the outstanding criminal bill of \$550 and gave the rest of the money to B stating it was hers.

B at this time then decided to file for divorce. X was going to represent A, but B refused to allow this. A came to my office for advise on the divorce, and told me of the above information. I told him that I thought that X should have listed himself as a unsecured creditor and that A should ask X for a refund of the \$265. A did ask X for such a refund and X refused stating that even if the bankruptcy was filed, A & X had an "understanding" that A would pay for the criminal legal services that X had provided to him.

The only information that I have on the actions of attorney X come statements made by A. I want to know:

1. If I have an obligation to report attorney X to the State Bar based on the information that I have as to his conduct?
2. If I tell the client A to report X, have my obligation been fulfilled as to reporting the conduct of X?
3. Do I have to do any investigation further concerning the conduct of attorney X before reporting him, if I am required to report him?

I would appreciate any guidance that you could provide on this subject.

Sincerely yours,

[REDACTED]

ALL INFORMATION CONTAINED  
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