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June 17, 1992

De [REDACTED]

RE: April 13, 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 April 13, 1992.

It was the opinion of the Committee that the provision of the Employment Agreement that you cited in your letter would violate Rule 1.5(e) of the North Dakota Rules of Professional Conduct. As we understand from the contract provision, it applies to new files and is not related to work that was commenced while the former employee was employed with the firm. In such a situation, at the time the work is commenced on the new file, the former employee and the law firm are no longer "in the same firm" for purposes of Rule 1.5. Consequently, any division of fees between the firm and a lawyer who is not a member of the firm would have to be done in accord with Rule 1.5(e).

Rule 1.5(e) provides a division of fees between lawyers who are not in the same firm may only be made under the following circumstances:

1. The division of the fee is in proportion to the services performed by each lawyer, by written agreement, assuming joint responsibility for the representation;

2. After consultation, the client does not object to the participation of all lawyers involved; and,

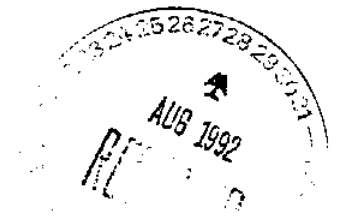
3. The total fee is reasonable.

Since the firm presumably would have no responsibility for the new file nor have done any work on the file, there would be no basis for a division of fees under Rule 1.5(e)(1). Consequently, the terms of the Employment Contract which provides for a division of fees in cases which the firm would have done no work and also where the client apparently would not have been consulted, in the Committee's opinion, would be a violation of Rule 1.5(e).

If you feel a need for further clarification or to discuss this further, please do not hesitate to submit further inquiries to the Committee.

Very truly yours,

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



April 13, 1992

Mr. Paul F. Richard
Chairman
Ethics Committee
State Bar Association of North Dakota
P.O. Box 6017
Fargo, ND 58108-6017

RE: Advisory Opinion

Dear Mr. Richard:

We would respectfully request that the Ethics Committee provide an advisory opinion with regard to the following issue:

Would Rule 1.5(e), North Dakota Rules of Professional Conduct, be violated by a law firm attempting to enforce a provision in an employment agreement between the law firm and an associate lawyer of the firm providing for a payment from the lawyer to the law firm based on a percentage of fees for services performed for clients of the law firm by the former associate after leaving the law firm, when the law firm has not performed any part of the post-termination services and has not agreed to assume joint responsibility for the post-termination representation?

The employment agreement between the law firm and its former associate lawyer provides, in pertinent part, as follows:

REPRESENTATION OF CLIENTS SUBSEQUENT TO TERMINATION.

If Employee [the associate lawyer] terminates this Agreement, or if Employer [the law firm] terminates the Agreement for cause, and Employee provides professional services on new files for any client of Employer who was a client during Employee's employment with Employer, Employer shall be entitled to receive the following:

- a. With regard to noncontingent fee cases, ten percent (10%) of the gross amount of fees received by Employee from such client for work performed during the 12 months following Employee's termination; and

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- b. With regard to contingent fee cases, fifteen percent (15%) of any recovered fee, regardless of when recovered, for any case undertaken during the 12 months following Employee's termination.

The associate lawyer, who was not a partner and had no ownership interest in the law firm, terminated the Agreement. After terminating the Agreement, the associate lawyer provided services on new files to clients who were clients of the associate lawyer before the associate lawyer joined the law firm, continued to be clients of the associate lawyer (and the law firm) while the associate lawyer was employed by the law firm, and remained clients of the associate lawyer after the associate lawyer terminated employment with the law firm. All post-termination services were provided by the former associate lawyer. No services were provided by the law firm; nor did the law firm assume joint responsibility for the post-termination representation. Because the law firm did not participate in the post-termination representation, the clients were not asked whether or not they would object to any participation by the law firm.

If any further information is needed, please contact me. A copy of the entire employment agreement, with the identities of the parties blocked-out, is enclosed.

Thank you.

Sincerely yours,

