

STATE BAR ASSOCIATION OF NORTH DAKOTA

ETHICS COMMITTEE

OPINION NO. 92-14

December 21, 1992

The Ethics Committee received a request for an opinion from [REDACTED] Attorney at Law, [REDACTED], North Dakota, which poses the following question:

What disposition can or must an attorney make of a bill of sale prepared for both the buyer and the seller with one of the parties paying for the preparation of the document and to whom an executed copy of the bill of sale was furnished and at which time he was asked if a copy of the document could be provided to the other party and three years later, a copy of the bill of sale was provided to her upon her request.

Following these events, a fire caused damaged to the house referred to in the bill of sale and a request to furnish another copy of the bill of sale was denied to her and to civil and criminal investigators.

The party paying for the preparation of the document requested of the attorney recently that the file be destroyed and that no copy of the bill of sale be released to anyone.

Preliminary Observations as to Rules of Professional Conduct which are not applicable to the question:

Rule 1.1 - Competence. While there may be some question of competence arising from the initial agreement to represent both parties in the drafting of a document or bill of sale, there appears to be no question presented in the letter as to the competence of the attorney in the actual drafting of the bill of

sale or the propriety of the document itself and therefore, Rule 1.1 is not applicable to the present question presented..

Rule 1.6 - Confidentiality of Information. The only information in question relating to the representation of the client or clients is the copy of the bill of sale which has already been provided to both parties to the agreement, and which by its nature would be intended to be a public document. Therefore, the confidentiality of information rule would not apply to the question presented.

Rules of Professional Conduct which are Applicable to the Question:

1. Rule 1.15 - Safekeeping Property. While the rule relating to safekeeping of client's property generally pertains to funds or items of property of value, this copy of the bill of sale appears to be of significant value at this time and therefore, constitutes property created on behalf of both parties. Therefore, the ongoing safekeeping of the property, that is the bill of sale, does appear to be governed by Rule 1.15.

2. Rule 1.7. Conflicts of Interest. This rule applies to the question presented. Rule 1.7 appears to deal with the propriety of a lawyer representing one client where there may be a conflict of interest with another under various circumstances. The attorney's agreement to represent both parties to draft a bill of sale for the purchase of a house from one to the other may be a conflict of interest but both parties apparently consented by their

actions at the time. However, Rule 1.7 does not relate directly to the question as to the present disposition of the bill of sale.

OPINION

The limited facts furnished by the letter requesting an opinion makes it difficult to make a totally reliable factual determination as to where the attorney/client relationship existed. Based upon the limited facts given, it appears that both parties consented by their actions to have the attorney represent each of their interests and upon that understanding, copies of the bill of sale were furnished to both parties shortly after the transaction occurred. Based on that determination, the one party's direction to the attorney not to release the file to anyone else would be binding on the attorney. The party's request to the attorney that the file be destroyed would not be binding on the attorney since the attorney has a right and an obligation to maintain a file and copies of documents generated on behalf of the client subject only to release by consent or by proper court orders.

Although the other party had been furnished a copy of the bill of sale at one time before there was a direction from the other party not to furnish copies to anyone, the attorney would be violating Rule 1.15 of the North Dakota Rules of Professional Conduct if a copy were now furnished to the party in the face of the other party's most recent directions.

It would be necessary to obtain more facts and to review contract law regarding the relationship between the parties before a determination could be made whether either of the parties was indeed the exclusive client of the attorney. It appears, however, that with a legal action pending, the best course of action for the attorney to take would be to retain the file without destroying it and without giving out copies of the document to either party and to give access to the file only pursuant to a properly issued subpoena duces tecum or an appropriate court order. A deposit of the file with the court pursuant to court order subject to examination of the file under court supervision, with notice to both parties, may be an alternative course of action.

[REDACTED]
[REDACTED]

[REDACTED]

Ms. Sandra L. Tabor
Executive Director
State Bar Association of North Dakota
P.O. Box 2136
Bismarck, ND 58502

RE: [REDACTED]

Dear Ms. Tabor:

On April 30, 1986, I met with [REDACTED] and [REDACTED] in my office. They requested that I draw up a Bill of Sale for them, after which [REDACTED] paid me for the preparation of the document. Following this, on May 6, 1986, I sent a letter to [REDACTED] enclosing an executed copy of the Bill of Sale for his records and informing him that the other executed copy would be kept in the file. I also asked [REDACTED] if [REDACTED] would like a copy for [REDACTED] records and, if so, one could be provided. On January 23, 1989, I sent a copy of the Bill of Sale to [REDACTED] following a telephoned request for the same.

In the Spring of 1992, [REDACTED] called my office and asked me to destroy the file containing the executed Bill of Sale but I refused to do so. Subsequently, [REDACTED] came into my office and instructed me not to release [REDACTED] file to anyone, after which I put said file in my safe.

Sometime after speaking with [REDACTED], [REDACTED] came into my office and informed me that there had been a fire in the house, which is the subject of this document, and she asked me for a copy of the Bill of Sale. I refused to furnish [REDACTED] with a copy of the document based upon [REDACTED] instructions. Shortly thereafter, an insurance adjustor questioned me about the file and I refused to release the contents of my file to him. A criminal investigator for the Bureau of Indian Affairs also called me and again I did not release the contents of the file to him. Consequently, the file has remained in my safe since the communication by [REDACTED] not to release the file.

My office has been burglarized twice in the last five weeks and I have been informed by the local Sheriff that the burglaries were in connection with an attempt to obtain this

file.

As a result of this chain of events, I am in a quandry, ethically, as to what to do with this file and I feel I need guidance as far as my next move is concerned. I have been informed that [REDACTED] is now represented in regard to the insurance matters relating to the house, which is the subject of this document. Also, I have received a hand-written note from [REDACTED] authorizing me to release the contents of the file to anyone.

Therefore, I would appreciate some guidance in this matter, specifically as to the following questions:

1. Who is my client?
2. What should I do with this file, given the demands made upon me by the insurance company's attorney; the criminal investigator; the instructions from my perceived client, [REDACTED], and the instructions from [REDACTED] releasing the file to anyone?

Thank you for your consideration in this matter.

Sincerely yours,

[REDACTED]