

STATE BAR ASSOCIATION OF NORTH DAKOTA

ETHICS COMMITTEE

OPINION NO. 93-03

February 26, 1993

The Ethics Committee received a request for an opinion from [REDACTED] and [REDACTED], [REDACTED], which inquires whether a North Dakota lawyer can form a partnership with a lawyer licensed only in another state and in Federal District Court in North Dakota.

[REDACTED] and [REDACTED] are interested in forming a partnership and have taken initial steps to accomplish that goal. [REDACTED] has filed an application to take the North Dakota bar examination in February. In doing so, he listed his place of employment as being [REDACTED]. A concern was then raised about whether [REDACTED] was holding himself out as an attorney licensed in this state and about compliance with the Rules of Professional Conduct. Wishing to ensure compliance with the Rules of Professional Conduct, [REDACTED] and [REDACTED] have suspended further action to form the partnership at this time.

The question presented is whether Rule 5.4(b) prohibits the partnership contemplated. It provides that "[a] lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." This rule does not prohibit two lawyers, even if one of them is not licensed in this State, from forming a partnership. Thus, [REDACTED] and [REDACTED] may form a partnership prior to [REDACTED] admission to the State Bar.

Even if the Rules do not preclude the formation of a partnership, however, there are other concerns raised by the situation. Rule 7.1 prohibits a lawyer from making "a false or misleading communication

about the lawyer, a person professionally associated with the lawyer, or their services." It goes on to provide that a communication is false or misleading if it "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." The Committee believes that the designation of ██████████" could constitute a misleading communication, as it may cause the public to believe that both individuals are licensed to practice law in this State if appropriate cautions are not taken. This concern is addressed, at least in part, by Rule 7.2.

Rule 7.2(a) prohibits a lawyer from using "a firm name, letterhead or other professional designation that violates Rule 7.1." Rule 7.2(b) governs situations in which a law firm has offices in more than one jurisdiction and allows the use of the same name in each jurisdiction. However, it goes on to provide that "identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located." Although ██████ and ██████ apparently will have offices only in one jurisdiction, the Committee believes that the same principles apply in the present case. Thus, ██████ and ██████ should take care to indicate in any letterhead or other professional designations that ██████ is only licensed in the State of ██████ and North Dakota Federal District Court.

CONCLUSION

A North Dakota lawyer can form a partnership with a lawyer licensed in another state and in Federal District Court in North Dakota, but not by the State of North Dakota. However, in any communication with the

public, Rules 7.1 and 7.2 of the Rules of Professional Conduct must be strictly adhered to.

This opinion is provided pursuant to Rule 1.2(B), North Dakota Rules for Lawyer Disability and Discipline. This rule states:

A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the Ethics Committee of the State Bar Association of North Dakota shall not be subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct which is the subject of the opinion or advisory letter.

This opinion was drafted by Pamela J. Hermes and was unanimously approved by the Ethics Committee on February 26, 1993.


Murray G. Sagsveen
Chairman

Murray Sagsveen
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Mr. Sagsveen and Members of the Ethics Committee

I, [REDACTED], contacted you this morning with a question concerning Rule 5.4 of the North Dakota Rules of Professional Conduct and its application to David Dusek and myself. As requested, I am sending this in the form of a facsimile to inform you of the details necessary for the Committee to make an informed decision about this matter.

Mr. [REDACTED] is an attorney currently licensed to practice in the State of [REDACTED] and admitted to practice in the Federal District Court of North Dakota. He has filed an application to take the February 1993 Bar Exam in North Dakota.

The event which triggered our awareness that a problem with such a partnership may arise was a phone call from Ms. Penny Miller at the Supreme Court. She expressed concern about the place of employment which [REDACTED] listed as [REDACTED] and [REDACTED]. She was concerned that [REDACTED] was holding himself out as an attorney licensed in the State of North Dakota.

[REDACTED] and I are interested in being partners and want to be in compliance with Rule 5.4 of the Rules of Professional Conduct. We have taken initial steps to become partners and need to know if we should temporarily suspend our plans until David is admitted to the Bar of North Dakota. The question most pressing is the interpretation of the term "nonlawyer" in Section (b) of Rule 5.4.

At no time has [REDACTED] held himself out to be an attorney licensed to practice in the State of North Dakota to any member of the public. Furthermore, he has referred anyone who has contacted him with a problem which involved any state matters to an attorney licensed in the State of North Dakota.

We need direction from the Committee to insure that we are in compliance with the Rules. Because of this development, we have ceased all preparation to become a partnership and will not resume such until we have been notified by the Committee that we would be in compliance with the Rules or until [REDACTED] has been licensed to practice law in North Dakota.

If you need further information from us regarding our question, please contact us at:

[REDACTED]

[REDACTED]