

STATE BAR ASSOCIATION OF NORTH DAKOTA

ETHICS COMMITTEE

OPINION N° 93-04

February 26, 1993

The Ethics Committee received a request for an opinion from the General Counsel of the [REDACTED] which stated:

I serve as General Counsel for [REDACTED], an Iowa-domiciled insurer, and several of its affiliated companies, and I am an attorney licensed to practice law in the States of Iowa and Colorado. I am not licensed to practice law in North Dakota.

One of our affiliates, [REDACTED], is domiciled in the State of North Dakota. I do not presently hold any type of officer position with [REDACTED]. However, I am frequently required to communicate information to various entities, including state insurance departments, outside counsel, or our branch managers and other employees, on behalf of all of our affiliated companies, including [REDACTED]. Additionally, I am periodically asked to serve as the contact person for receipt of legal documents affecting [REDACTED], which may occasionally be sent by officials of North Dakota. Because our parent company is licensed in all 50 states, I am also periodically required to research the laws of each state, and provided [sic] guidance concerning the legal obligations or limitations imposed upon our companies by those laws and regulations. This would include communicating to the management of [REDACTED] factual information about the statutory and regulatory provisions of North Dakota's laws.

I frequently am in a quandary as to how to identify myself when corresponding to third parties, such as insurance department officials or outside counsel, on behalf of all of our companies. It is obviously awkward (at best) to sign as General Counsel of certain companies, while being unable to identify any formal relationship with others. On the other hand, I do not want to sign merely as "General Counsel", if it creates the impression that I hold a position with certain affiliates (such as [REDACTED]) when I actually do not.

It has been suggested that affiliates such as [REDACTED] also elect me as General Counsel, in order to solve this problem, if I can hold this post for a

North Dakota-domiciled company without being admitted to the bar there. Thus, I am writing to you, and I ask that you forward this inquiry to the appropriate bar official or committee for a response. It is not my present intention to seek a license to practice in North Dakota, nor do I intend to reside in North Dakota or practice law in North Dakota in any traditional sense of the word. I am a full-time corporate attorney with no outside practice or clients in any jurisdiction. My practice is limited to (1) helping assure that each state's legal requirements are met by our corporations (in part through monitoring statutory changes), (2) preparing Board of Directors' resolutions, (3) assisting in drafting By-Law amendments, (4) communicating to our management employees (including those in North Dakota) about new legal requirements which come to my attention, (5) transmitting requested information to (or seeking information or action from) state insurance departments, and (6) serving as a liaison between outside counsel and our corporations in the case of actual or threatened litigation, etc.

I would appreciate an opinion from an appropriate bar official as to whether I may hold the position of General Counsel [REDACTED] domiciled in North Dakota, with my duties limited and defined as set forth above, without running afoul of any North Dakota requirements or restrictions, including the unauthorized practice of law in your state. Thank you for your assistance in obtaining response to this inquiry.

Discussion

Section 27-11-01 of the North Dakota Century Code states:

Except as otherwise provided by state law or supreme court rule, a person may not practice law, act as an attorney or counselor at law in this state, or commence, conduct, or defend in any court of record of this state, any action or proceeding in which he is not a party concerned, nor may a person be qualified to serve on a court of record unless he has:

1. Secured from the supreme court a certificate of admission to the bar of this state; and
2. Secured an annual license therefore from the state bar board.

Any person who violates this section is guilty of a class A misdemeanor.

The North Dakota Supreme Court defined the practice of law in *Cain v. Merchants National Bank & Trust Co. of Fargo*, 268 N.W. 719 (N.D. 1936) and *State v. Niska*, 380 N.W.2d 646 (N.D. 1986). In both cases, the North Dakota Supreme Court broadly construed the

practice of law to include preparation of cases for trial, appearances in court, giving legal advice and counsel, and preparing legal documents. Also see, *Ranta v. McCarney*, 391 N.W.2d 161 (N.D. 1986).

Accordingly, the activities that you mentioned would constitute the "practice of law." However, none of the activities are performed by you while "in this state."

In *State v. Niska*, the North Dakota Supreme Court observed that "North Dakota has a compelling interest in regulating the practice of law within its boundaries." 380 N.W.2d at 650. The court also stated that §27-11-01 confers jurisdiction to a county court "over criminal misdemeanors occurring in that county." 380 N.W.2d at 648.

Similarly, in *Ranta v. McCarney*, the Supreme Court stated that "Section 27-11-01, N.D.C.C., prohibits the practice of law in this State without proper authorization." 391 N.W.2d at 162. The court also stated that "[t]he purpose of the statute is to determine before an individual practices in this State whether that person is competent and qualified to do so."

Ranta v. McCarney specifically addressed the fees which an unlicensed out-of-state attorney could recover. The court said:

[A]n out-of-State lawyer not authorized to practice law in this State is prohibited from recovering any fees relating to the practice of law actually conducted in this State (unless that attorney falls within a recognized exception to the rule). Because *Ranta* does not fall within any of the recognized exceptions to the rule, the only issue remaining is the determination of which fees relate to the practice of law conducted outside of North Dakota.

391 N.W.2d at 166.

When this guidance is applied to your fact situation, it appears that you can provide legal services to affiliated companies in North Dakota from your present location. However, you could not provide the same legal services if you were actually located within the State of North Dakota unless you first complied with §27-11-01, N.D.C.C., or any other statute, regulation, or rule (e.g., Rule 11.1, North Dakota Rules of Court).

The Ethics Committee does not offer any opinion concerning the use of the title "general counsel." The Ethics Committee is unaware of any law or regulation which prohibits a domestic insurance company from designating an out-of-state attorney as its general counsel.

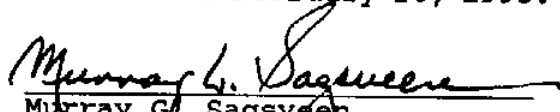
Conclusion

The Ethics Committee concludes that you may provide legal services to a domestic insurance company without obtaining a North Dakota license to practice law - if you are providing those services from outside the State of North Dakota. However, you must obtain a license pursuant to §27-11-01, N.D.C.C., before you may practice law within the State of North Dakota.

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 Murray G. Sagsveen and was unanimously approved by the Ethics Committee on February 26, 1993.


Murray G. Sagsveen
Chairman

kac:68-5669.opn

[REDACTED]

December 16, 1992

Executive Director
North Dakota State Bar Association
P.O. Box 2136
Bismarck, ND 58502

Re: Information Request

Dear Sir or Madam:

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[REDACTED]

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Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

