

STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE
OPINION NO. 94-05
March 24, 1994

The Ethics Committee received a request for an opinion from [REDACTED] North Dakota. [REDACTED] request to this committee for an opinion arises from the following set of facts.

[REDACTED] law firm appeared on behalf of a client who had been served with a Summons and Complaint. Sometime after the appearance, the client contacted the law firm and terminated its representation of him in the particular action. The client also specifically directed that his address be kept confidential.

In accordance with the client's wishes, [REDACTED] filed a motion to withdraw from the representation of the client under Rule 1.16(a)(4) of the North Dakota Rules of Professional Conduct. Since the client had specifically instructed that his address remain confidential, the motion to withdraw did not include that information. The court denied the motion to withdraw on the ground that 11.2(b) of the North Dakota Rules of Court requires the disclosure of a party's last known address in a motion for leave to withdraw unless another attorney is being substituted.

The specific question [REDACTED] has asked this Committee to consider is as follows:

Whether an attorney may disclose a client's last known address, without that client's consent, to comply with NDROC 11.2(b), without breaching his duty of

confidentiality under Rule 1.6 of the North Dakota Rules of Professional Responsibility?¹

Rule 1.6 of the North Dakota Rules of Professional Conduct establishes a lawyer's ethical obligation to hold inviolate confidential information of the client. The Rule provides that "[a] lawyer shall not reveal, or use to the disadvantage of a client, information relating to representation of the client unless required or permitted to do so by this rule." N.D.R. Prof. Cond. 1.6. The rule then goes on to identify specific exceptions to the lawyer's duty of confidence. One of those exceptions permits a lawyer to disclose information relating to representation of the client when it becomes necessary "to comply with law or court

¹ For purposes of this opinion only, the Committee will assume that a client's address is a confidence protected by Rule 1.6 of the Rules of Professional Responsibility. Mr. Fleck did not ask the Committee to address that specific issue.

The Committee notes that there appears to be a split of authority on the issue of whether a client's address is considered a confidence. It has been stated by one commentator that identifying facts about the client, such as address and occupation, are not privileged. McCormick, Evidence § 90 at 185-86 (1972); See also Falkenhainer v. Falkenhainer, 97 N.Y.S.2d 467, 468 (N.Y. Sup. Ct. 1950) (client's residence not a communication essential to attorney's advice and, therefore, not privileged).

On the other hand, there is authority holding that as a general rule an address given confidentially by the client to an attorney while consulting him in a professional capacity is privileged information. State v. Kirk, 505 P.2d 619, 623 (Kan. 1973). See also Ex parte Schneider, 294 S.W. 736, 738 (Mo. Ct. App. 1927); In re Heile, 29 N.E.2d 175, 177 (Ohio Ct. App. 1939). See generally Annotation, Disclosure of Name, Identity, Address, Occupation, or Business of Client as Violation of Attorney-Client Privilege, 16 A.L.R.3d 1047 (1967).

The American Bar Association has issued an informal opinion in which it is stated that a client's address is a "secret" and thus protected by DR 4-101(B) of the Code of Professional Responsibility when the client specifically requests that the address not be disclosed. See ABA Informal Op. 1188 (1971).

order[.]" N.D.R. Prof. Cond. 1.6(g). As is noted in the comment to Rule 1.6:

Provisions in other law may seem to permit or require a lawyer to disclose information relating to a representation. Such a provision raises the legal issue of which directive takes precedence--the general rule of non-revelation found in this Rule or the provision in other law authorizing disclosure. It is the lawyer's obligation to disclose only when the precedence of the law authorizing disclosure is clear; an order of a court requiring or permitting disclosure is to be taken as a determination of that precedence.

N.D.R. Prof. Cond. 1.6 comment.

As the facts indicate, the client terminated [REDACTED] law firm's representation of him. Rule 1.16 of the Rules of Professional Conduct provides that a lawyer shall seek to withdraw from the representation of a client if the lawyer is discharged. N.D.R. Prof. Cond. 1.16(a)(4). An attorney's withdrawal from representation of a client is governed by Rule 11.2 of the North Dakota Rules of Court. Rule 11.2 provides as follows:

(a) **Notice of Withdrawal.** An attorney may withdraw his appearance for a party only upon leave of the court after giving reasonable notice of the time and place of the presentation of the motion for leave to withdraw by personal service or by registered or certified mail directed to the party at his last known business or residence address.

(b) **Motion to Withdraw.** The motion for leave to withdraw must be in writing and unless another attorney is substituted, must state the last known address of the party represented.

NDROC 11.2 (emphasis added.)

Thus, under Rule 11.2, an attorney who has been discharged or wishes to withdraw an appearance must bring a motion before the court and serve notice of the motion on the client. The client's

last known address must be identified in the motion, unless there has been a substitution of attorneys. The purpose of the rule is to ensure that the Court is not cut off from communication with a represented party following the withdrawal of counsel.

Here, although [REDACTED] law firm was discharged by the client, there was no substitution of counsel. Thus, NDROC 11.2(b) mandates that [REDACTED] reveal the client's last known address to the Court prior to his withdrawal.

This Committee believes the disclosure requirement found in NDROC 11.2(b) specifically authorizes disclosure of the client's last known address as an exception to Rule 1.6. The facts present a situation where [REDACTED] obligation of confidence owed to the client must give way to his obligation owed to the Court to comply fully with procedural rules enacted to further the orderly administration of the legal system. Accordingly, it is the Committee's opinion that [REDACTED] disclosure of the client's last known address to comply with NDROC 11.2(b) would not constitute a violation of his duty of confidence under Rule 1.6.

The Committee recommends that [REDACTED] contact the client to request that the client furnish the name of another attorney to be substituted as counsel in the case and to explain to the client that, unless he does so, [REDACTED] will be forced to disclose the client's last known address pursuant to the North Dakota Rules of Court.

This opinion is provided pursuant to Rule 1.2(B) of the 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 Patricia R. Ellingson, and was unanimously approved by the Ethics Committee on March 24, 1994.

A handwritten signature in dark ink, appearing to read "Michael Maus", written over a horizontal line.

Michael Maus, Chairman

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February 23, 1994

Michael J. Maus, Chairman
 Ethics Committee
 State Bar Association
 P. O. Box 370
 Dickinson ND 58502-0370

Re: Potential Conflict Between Rules 1.6 and 1.16 NDRProfC,
 and Rule 11.2(b), NDROC

Dear Mr. Maus:

I would appreciate it if the Ethics Committee could issue an informal opinion on the following matter:

A client who had been formally served with a Summons and Complaint, and for whom our firm has made an appearance, calls and terminates our representation of him in the action, but requests that we keep his address confidential. I then file a Motion to Withdraw from the representation of the client pursuant to Rule 1.16(a)(4), NDRProfC, without disclosing the client's last known address. The Judge denies the motion on the grounds that Rule 11.2(b), NDROC, requires that the last known address of the client be disclosed in a motion to withdraw where another attorney is not being substituted.

Given the above scenario, may I disclose my client's last known address, without his consent, under Rule 1.6(g) NDRProfC, which permits disclosure "to comply with law or court order;" and if not, if the client does not give any further direction regarding my representation of him after sending him notice of the Court's denial of my motion to withdraw as his attorney, will I be violating any duty owed to the client if I simply forward to the client at his last known address, copies of all documents received concerning the action--particularly in light of his last communication in which he terminated my representation of him. In addition, I note that immediately after receipt of the Judge's decision denying my Motion to Withdraw, I sent a letter to the client's last known address notifying him of the decision,

Post-Net brand fax transmittal memo 7571		# of pages: 2
To: <i>Sandi Taber</i>	From: <i>Michael J. Maus</i>	
Co: <i>SBAW</i>	Co: <i>44614</i>	
Dept:	Phone #	
Fax # <i>224-1121</i>	Fax # <i>227-4745</i>	

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requesting that he contact me to discuss it further, and indicating that if he did not contact me, I would not be performing any additional services, other than to forward copies of all documents received to him.

I would appreciate whatever guidance your committee can offer.

Sincerely,

[REDACTED]