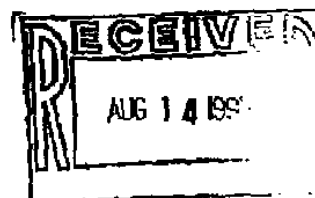


August 10, 1995

CONFIDENTIAL

Ms Alice R. Senechal, Chairperson
Ethics Committee, SBAND
106 North 3rd. Street, Suite M-102
Grand Forks, N. D. 58206-5576



RE: Rules 3.6; 4.1; 4.3; and 7.1, Rules of Professional Conduct.

Dear Ms Senechal:

Thank you for your response to my previous inquiry, concerning requesting information from the public.

I now present the following for the committee's opinion, with respect to reference rules:

REQUEST FOR INFORMATION

My name is [REDACTED] I am a lawyer, with my offices in [REDACTED] North Dakota. I am representing two persons, who have had surgical procedures, on their eyes, known as RADIAL KERATOTOMY. They are not satisfied with the results of the surgeries, and as part of their claims, they allege that they were not properly informed on the results they received. If you have had a RADIAL KERATOTOMY procedure on your eye or eyes, and were not made knowledgeable, before the surgery, of the results you are experiencing, I would like to hear from you. Please write: [REDACTED]

The reason for my interest in seeking this information comes from a doctor's deposition, in which he was asked the following questions and gave the following answers:

Q. "Is this procedure that you advertise and perform an elective procedure on the part of the patient?"

A. Yes.

Q. As an ophthalmologist and a medical doctor, do you understand that it's the surgeon's duty to inform the patient of the known risks, benefits, possible outcome, side effects and alternatives?

Page 2.
July 10, 1995
Ms Alice R. Senechal

A. I always give my patients total informed consent about all the procedures that I'm going to undertake with them.

Q. And you consider that your duty?

A. Absolutely. I always do it.

From the foregoing disclosure, under oath, and with the confidential nature of the doctor's records, I must use another source to learn the truth.

My request appears, to me, to actual and factual, and relating only to the informed consent matter, and should not be in violation of any of the rules.

I will appreciate the committee's opinion.

Very truly yours
[Redacted signature]

[Redacted text]

P. S. Please note that patients were sought through advertising, and the procedure was elective.

STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE

OPINION NO. 95-09
September 26, 1995

The Ethics Committee received a request for an opinion from Attorney [REDACTED] represents two clients in cases concerning radial keratotomy against the same doctor, clinic and hospital. Informed consent is an issue in each case. The doctor has apparently testified in one case, stating: "I always give my patients total informed consent about all the procedures that I'm going to undertake with them."

[REDACTED] previously submitted a proposed statement for statewide publication seeking information from the public, which the Committee determined would violate the Rules of Professional Conduct. [REDACTED] has now submitted a revised statement for consideration, which states:

REQUEST FOR INFORMATION

My name is [REDACTED] I am a lawyer, with my offices in [REDACTED] North Dakota. I am representing two persons, who have had surgical procedures, on their eyes, known as RADIAL KERATOTOMY. They are not satisfied with the results of the surgeries, and as part of their claims, they allege that they were not properly informed on the results they received. If you have had a RADIAL KERATOTOMY procedure on your eye or eyes, and were not made knowledgeable, before the surgery, of the results you are experiencing, I would like to hear from you. Please write:

[REDACTED]

[REDACTED] purpose in making this publication is to obtain evidence relating to whether the doctor's statement that he always gives his patients total informed consent is true.

In his initial request, [REDACTED] directed the Committee's attention to Rule 3.6 of the Rules of Professional Conduct, which relates to trial publicity. Rule 3.6 provides:

A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of mass public communication if the lawyer knows or reasonably should know that the statement will create a serious and imminent threat of materially prejudicing an adjudicative proceeding.

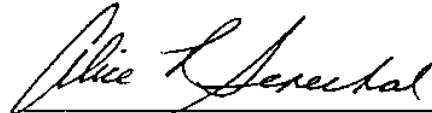
Based upon the facts as provided to the Committee, the proposed publication does not appear to violate Rule 3.6. In the Committee's opinion, the proposed publication would not create a serious or imminent threat of materially prejudicing any court proceedings.

However, the Committee would point out that if [REDACTED] publishes the proposed statement, Rules 4.1 through 4.4, which apply to transactions with persons other than clients, and Rule 7.1, which relates to communications concerning the services of a lawyer, may have application and should be strictly adhered to.

This opinion is provided pursuant to Rule 1.2(B), North Dakota Rules for Lawyer 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 association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that 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 September 26, 1995.



Alice R. Senechal
Chairperson