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STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE

Opinion No. 96-04

February 28, 1996

The Committee has received a request for an opinion regarding potential conflicts of a public interest law firm arising from contact with potential clients whose representation it has declined, potential conflicts involving private law firms with which the public interest law firm may contract to perform certain legal services, potential conflicts involving spouses of staff of the public interest law firm, and potential conflicts involving volunteer secretarial assistance for the public interest law firm.

Several distinct issues have been presented. The first issues deal with potential conflicts which may arise when the public interest law firm performs screening for a potential client's financial eligibility and for the type of legal services sought, but the public interest law firm declines to represent the potential client after its screening is performed. The other issues include: 1) whether conflicts of the private law firm contracting with the public interest law firm must be imputed to the public interest law firm and vice versa; 2) whether there is a conflict when the contracting private firm includes a part time states attorney; 3) whether there is a conflict when one spouse is employed by a public interest law firm and one is either in private practice or employed by a states attorney's office and the firms are on opposing sides of a controversy; and 4) whether conflicts must be imputed when a legal secretary or legal assistant volunteers to assist the public interest law firm and whether such conflicts may be overcome by a screening process.¹

¹ The opinion request uses the word "screening" in two different contexts. The first context is the "screening" methods by which conflicts or potential conflicts of interest may be identified before an attorney undertakes representation of a client, in other words, "screening" cases to identify cases that may create a conflict. The other context uses the term "screening" to denote a mechanism or procedure, like a Chinese wall, used to resolve an identified conflict of interest problem by keeping a firm's representation of matters or clients separate. This opinion also uses the term "screening" in both contexts.

FACTS

When the public interest law firm is contacted by a potential client, it follows standard intake procedures to obtain information from the potential client to complete an eligibility application. Information which is obtained includes identification of the potential client (name, address, phone, and birthdate), identification of the potential opposing party, the potential client's household income and expenses, the potential client's household assets, and the type of problem for which the client is seeking the assistance of the public interest law firm. The information is generally obtained by a secretary employed by the public interest law firm. The screening may be staffed by a lawyer or paralegal employed by the public interest law firm. In some cases, the potential client may speak with both a secretary and a member of the legal staff during the intake process.

If the public interest law firm declines to represent the potential client, based either on a determination of financial ineligibility or because the type of legal problem involved is not a priority for the public interest law firm, the public interest law firm may refer the potential client to the state bar association's lawyer referral program. After declining representation of a potential client, the public interest law firm may be contacted by the party opposing the potential client. The public interest law firm requests this committee's opinion on whether the Rules of Professional Conduct would allow the public interest law firm to represent the opposing party after having obtained the intake information from the potential client whose representation it declined.

The public interest law firm contracts with private law firms to complete assigned cases and to cover hearings for the public interest law firm in emergency situations. A condition of the public interest law firm's federal funding is that it spend 12.5% of funds involving the private bar in the delivery of quality legal services to the poor. The requesting lawyer states that a new condition of receiving federal funds is that grantees assure there are no relationships which result in other than unavoidable and extremely minimal conflicts with the client population.

Assignments to contracting private lawyers are made on a case by case basis after a person is found eligible for the public interest law firm's services and the person's legal problem is determined to be within the public interest law firm's priorities. The contracting lawyer is required to submit detailed billing statements to the public interest law firm every ninety days. The public interest law firm endeavors to make training, programming, literature, resources, and technical assistance available to the contracting lawyers.

DISCUSSION

Potential Clients Whose Representation Has Been Declined

In a recent articles, a noted legal commentator stated:

The problems posed by prospective clients require consideration of two basic interests. On the one hand, a prospective client must have reasonable latitude in sounding out a lawyer or law firm about undertaking a matter. This will require describing the matter in general terms and identifying other relevant parties, including adverse parties. It may also require getting information about the law firm, its experience and special competence, and the potential fee arrangements. Getting this information in turn will require the prospective client to supply some further details about the matter in question. For example, how could a lawyer provide an estimate of the cost of a divorce or of litigation over an intra-corporate dispute without knowing something about the attitude and the assets of the opposing party - information that can be obtained only from the prospective client?

On the other hand, a lawyer dealing with a prospective client must have reasonable latitude in gathering relevant information, without penalty of future disqualification.

The lawyer needs to determine whether the prospective matter entails representation adverse to existing clients, or to a former client in the same or a substantially related matter. The lawyer also must determine whether the matter is one that he or she or the firm can properly handle, having regard for the firm's competence and its other present commitments. He or she must consider the fee arrangement and make preliminary assessment of whether the prospective client will be good for the fee.

Geoffrey C. Hazard, Jr. "The Would-Be Client," National Law Journal Jan. 15, 1996 at A19, A20.

Since representation of the potential client was declined, analysis of the issues begins with a determination of whether the potential client is considered a former client. If the potential client is considered a former client, N.D.R. Prof. Conduct 1.9(a) would prohibit representation of the opposing party in the same matter. Another commentator observes:

Under normal circumstances, disqualification should not result from an initial consultation alone, so long as the lawyer did not extend the consultation for too long a time or discuss items of confidential information irrelevant to determining whether a conflict existed. The lawyer must also have acted in good faith and may not, for example, use the initial consultation as a subterfuge to gain confidential information for the adverse use of an existing client. In order for sufficient information to be disclosed to permit a lawyer to know whether a conflict exists, there must often be some disclosure of information that is confidential. Without such disclosure, lawyers could not effectively police and prevent conflict problems. Although authority on the point seems not to exist, it must be clear that a lawyer who in good faith acquires the information needed to do a review of possible conflicts should not be barred from representing a present client adversely to the inquiring, prospective client.

Charles W. Wolfram, Modern Legal Ethics 327 (1986).

Professor Hazard writes:

The place to begin analysis is the definition of a 'prospective client.' Simply, a prospective client is one who consults a lawyer with a view to engagement but who does not actually hire that lawyer and so never becomes a full-fledged client. As such, a prospective client is not entitled to the protections that the rules of legal ethics accord to a client. These include the protection against a lawyer's disclosure of client confidences, which by definition protects only 'clients.'

Another protection afforded a client is the provision in Rule 1.7 that the lawyer may not undertake representation of a conflicting interest. Hence, the fact that a lawyer has an interview with a prospective client does not necessarily mean that his [sic] firm incurs a conflict in continuing representation adverse to that person in the same matter. A related protection also available only to clients is that provided in Rule 1.9, whereby a lawyer may not later undertake another representation that is adverse to a former client in the same or a substantially related matter.

Geoffrey C. Hazard, Jr., "The Would-Be Client II," National Law Journal Jan. 29, 1996 at A19 [hereinafter Hazard II] (emphasis in original).

In this committee's opinion, Rule 1.9(a) should not be interpreted to prohibit representation of the party opposing a potential client whose representation has been declined, so long as the information obtained from the first potential client was limited to that necessary to determine whether representation could be undertaken.

The conclusion that Rule 1.9(a) does not prohibit the representation does not end the analysis. Even if no lawyer-client relationship was formed, the public interest law firm may have an obligation of confidentiality to the potential client under Rule 1.6, and that obligation of confidentiality may make it necessary to decline representation of the party opposing the potential client whose representation has been declined. If a lawyer's representation of a client would be adversely affected by a duty of confidentiality to another person, N.D.R. Prof. Conduct 1.7(a) would prohibit the representation.

ABA Comm. on Professional Ethics and Grievances, Formal Op. 358 (1990) addresses confidentiality of information disclosed to a lawyer by a potential client who is seeking legal representation. The opinion concludes that Model Rule of Professional Conduct 1.6² protects information disclosed by a potential client seeking to engage the lawyer's services even though no legal services are performed and the representation is declined. Thus, the lawyer may not reveal the information or use it to the disadvantage of the potential client unless the potential client consents after consultation, or unless the information has become generally known.

Professor Hazard writes:

[S]ome modified protections are required. The underlying justification is not the protection of clients as such, however. Rather the rationale is to afford reasonable protection for the preliminaries through which lawyers and people who need them determine whether they should enter into a professional relationship. That is, the rules are to facilitate the system of free choice of lawyers on the part of clients and of independent, multi-client practice on the part of lawyers.

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The basic rule is that general preliminary discussions are entitled only to limited confidentiality protection and are not given effect in determining conflict of interest.

² Although North Dakota's version of Rule 1.6 differs from the model rule, the differences are not material to the issues raised in either the ABA opinion or in this committee's opinion.

Hazard II at A20.

The ABA opinion discusses measures available to avoid disqualification resulting from disclosure of information by a potential client. Those measures include: 1) identification of conflicts at the "earliest practicable point in discussions with a would-be client"; 2) limiting information from a potential client to that which is necessary to check for conflicts; 3) obtaining written waivers of confidentiality and advising the potential client that preliminary information divulged for the purpose of identifying conflicts will not be confidential; and 4) taking steps to prevent disclosure of the information to other members of the law firm.

The ABA opinion gives examples of implementation of the principles of its opinion, including an example in the context of litigation. If, after having undertaken representation of one party to litigation, the law firm is contacted by the opposing party who is seeking representation and the opposing party discloses only the identity of the opponent (in this example, the client who is already represented by the firm) and the nature of the matter involved, and the law firm declines representation of the second party after the conflict is identified, the ABA opinion concludes that the law firm may continue to represent the first party. However, the law firm may not communicate to the first party that it has been contacted by the opponent, and it may not use the information disclosed by the second party to the disadvantage of the second party unless the second party gave consent or the information became generally known.

Applying the principles of the ABA opinion to the questions presented, this committee concludes that the public interest law firm may represent the party opposing a potential client whose representation it has declined.³ However, the public interest law firm may not use information obtained from the first potential client absent consent from that potential client, or unless the information has become generally known.

The public interest law firm asks whether its obligations differ based on whether the information from the potential client is communicated to secretarial staff rather than to legal staff. From the facts presented, this Committee assumes that the information from potential clients is entered or stored on an application form. This committee concludes that, under N.D.R.

³ This committee concludes that the principles of the ABA opinion can be applied to the situation presented, even though the ABA opinion concerns declining representation of the second party to contact the law firm rather than the first party to contact the law firm.

Prof. Conduct 5.3⁴, the public interest law firm's obligations to the potential client are not affected by the role or function of the staff member to whom the information is communicated. Under a recent decision of the North Dakota Supreme Court, a crucial question is access to client information. Heringer v. Haskell, 536 N.W.2d 362 (N.D. 1995). There is nothing in the facts here presented that suggests access to information obtained from potential clients whose representation is declined would be restricted from some members of the public interest law firm's staff. From the facts presented, it appears that the application information from potential clients whose representation is declined is available to staff members other than the secretarial staff which received the information directly from the client. The ABA opinion suggests implementation of a system to shield other members of the firm from obtaining the information disclosed by the potential client. In light of the Heringer case, this committee declines to follow that portion of the ABA opinion.

The public interest law firm asks whether it could adopt a "boiler-plate disclosure and consent form" to cure conflicts, and if so, whether that form would need to be signed by the first potential client as well as by the opposing party. ABA Op. No. 90-358 addresses waivers of confidentiality. The ABA opinion suggests that waivers may be used, but that, to be effective, a waiver must be signed by the potential client whose representation the public interest law firm has declined. The potential client would need to give informed consent to the waiver of confidentiality. See also Hazard II, at A20. The public interest law firm also asks whether

⁴ Rule 5.3 provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) The lawyer shall make reasonable efforts to put into effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

.

(c) The lawyer shall be responsible for a violation of these rules by the nonlawyer if the lawyer knows of the violation at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

N.D.R. Prof. Conduct 5.3 (1995).

a "time line" could be developed, after which only the second party would need to sign a disclosure and consent form. The rules of professional conduct impose no time limitations on obligations of confidentiality and conflict avoidance, and this committee cannot interpret the rules to allow for the "time line" which the public interest law firm suggests.

Private Law Firm Involvement

The requesting attorney presented four questions relating to private law firm involvement with the work of the public interest law firm. Each of the four questions is set out below.

"Is the contractual arrangement one which requires imputation of conflict of all contractor law firm's cases with all cases of public interest law firm, or can the public interest law firm screen for conflicts and if none, before a formal referral to contractor's law firm, a conflicts screening by that firm?"

It is well settled that if a lawyer in a law firm has a conflict such as would preclude representation of a client, all lawyers in the firm have a disqualifying conflict by imputation. N.D.R. Prof. Conduct 1.10 (1995); See Sargent County Bank v. Wentworth, 500 N.W.2d 862, 870 (N.D. 1993). The issue as to what constitutes a conflict giving rise to an imputed disqualification is governed by Rule 1.10(a).⁵

In the current context, the issue revolves around the nature of the relationship between the private contracting firm and the public interest firm. As the comment to Rule 1.10 sets forth:

For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in a legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific

⁵ Rule 1.10(a) provides:

(a) Lawyers associated in a firm may not knowingly represent a client when any one of them practicing alone would be prohibited from doing so by these rules, except as provided by Rule 1.11 or Rule 1.12.

N.D.R. Prof. Conduct 1.10(a) (1995).

Neither Rule 1.11 or 1.12 have any applicability in the current situation.

facts. . . . The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule involved. . . .

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and the specific facts of the situation.

N.D.R. Prof. Conduct, Comment to Rule 1.10 (1995).

Since no specifics have been set forth in either the request for an opinion or the attached materials, the committee directs the public interest law firm to consider the following factors:

- 1) The nature of the agreement between the private law firm and the public interest law firm. More specifically, does the contract itself create a relationship that is more in the nature of a partnership or does it simply set forth a procedure for referring certain cases under certain circumstances?
- 2) What type of access, if any, do the members of the private firm have to the files of the public interest firm and vice versa?
- 3) The ethical rules implicated in any particular case.

If the consideration of these and the other relevant factors leads to the conclusion that the relationship between the private firm and the public interest law firm meets the definition of the term "firm" as discussed in the comment to Rule 1.10, screening cannot avoid the imputation of the conflict to either the public interest law firm or the private firm (although it would be possible for the client to waive the disqualification after full consultation pursuant to Rule 1.10(d)). If the relationship is not within the definition of the term "firm," strict screening may be used to avoid an imputation of any conflict.

"If the contracting attorney is a part time states attorney as well as engaging in private practice, is there a potentially inherent conflict of interest? Can screening address conflict problems or is there an automatic imputation of commonality of knowledge that could not be solved in case by case screening."

The committee is of the opinion that this question is directly controlled by SBAND Ethics Committee Op. No. 95-03. The requesting attorney is directed to a careful reading of that opinion.

"If one spouse is employed by a public interest law firm and the other spouse by a states attorney's office or private law firm and they learn they are representing opposing sides of a case, or one is involved in a civil case which impacts on a criminal action that the other is involved with, is a consent after consultation required? Is there any imputation to either firm?"

The minutes of the Attorney Standards Committee reflect that the provision in the ABA Model Rules which stated that spouses cannot represent opposing parties in a case without a consent from the client after consultation, was omitted by the committee on grounds that the attorneys in this predicament are professionals and should be allowed to exercise the discretion contemplated under Rule 1.7.

More specifically, the Attorney Standards Committee apparently believed that the issue presented in these types of cases was one best left to the general conflict of interest rule.⁶ Rule 1.7 makes it clear that the general rule on conflicts requires an attorney to consult with the client whenever the representation "might" be adversely impacted by the lawyer's relationships with others. The comment states:

[A] lawyer's personal interests cannot be allowed to affect the representation. For example, a lawyer's personal relationship through marriage, blood, or otherwise, with the opposing counsel or the opposing

⁶ The Rule provides in relevant part:

Rule 1.7 Conflict of Interest: General Rule

(b) A lawyer shall not represent a client when the lawyer's own interests are likely to adversely affect the representation.

(c) A lawyer shall not represent a client if the representation of that client might be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless:

- (1) The lawyer reasonably believes the representation will not be adversely affected; and,
- (2) The client consents after consultation

N.D.R. Prof. Conduct 1.7 (1995).

client, may compromise the lawyer's ability to exercise the independent professional judgment required. The closer the relationship the more likely the adverse effect.

N.D.R. Prof. Conduct, Comment to Rule 1.7 (1995).

At a minimum, Rule 1.7 requires that an attorney acquire consent after consultation whenever a law firm which employs the attorney's spouse is representing the opposing side on a case or is involved in a civil case which impacts a criminal action in which the other spouse is involved.

In any case where an attorney is disqualified by Rule 1.7, the disqualification is imputed to the firm under Rule 1.10. This disqualification can be waived by the client after full disclosure and consultation. N.D.R. Prof. Conduct 1.10(d) (1995).

"If a legal assistant or secretary volunteers to help a public interest law firm in its law office, is there imputation of knowledge of cases from the volunteer's law firm employer to the public interest law firm and vice versa that cannot be overcome by a screening process."

Under Rule 5.3 of the North Dakota Rules of Professional Conduct a lawyer has an obligation to "make reasonable efforts to ensure that the nonlawyer [employee's] conduct is compatible with the professional obligations of the lawyer . . ." N.D.R. Prof. Conduct 5.3 (1995).⁷

As the question propounded refers to an "imputation of knowledge," it is presumed that the question relates to the preservation of client confidences. Many issues relating to client confidences have recently been addressed by the North Dakota Supreme Court in Heringer v. Haskell, 536 N.W.2d 362. In Heringer the Court intimated that disqualification must be considered on a case by case basis. Id. at 365. As the committee stated in SBAND Opinion Ethics Committee No. 95-12:

The preservation of confidentiality has been construed to entail a determination of the lawyer's access to information. The extent to which the lawyer has had access to the client's confidential information becomes the relevant point of the inquiry. Where the lawyer has general access to the files of all the firm's clients it will be assumed that the lawyer is privy to all information contained in the files. Where, however, the lawyer has access to only a limited number of a client's files, it will be assumed that the lawyer has access to

⁷ See note 4 for the text of Rule 5.3.

information on only those clients he/she has actually served.

In the instant case, both the employing attorney and the supervising attorney at the public interest law firm have an obligation to ensure that the volunteer's conduct complies with the standards imposed by the Rules of Professional Conduct. The committee's understanding is that as a general rule, most law firms allow support staff access to all the firm's files. In these cases, screening (in the sense of a "chinese wall") is simply not available. See, *Heringer v. Haskell*, 536 N.W.2d 362 (N.D. 1995). The issue is one of access. If the volunteer member of a firm's support staff has even theoretical access to the firm's files, the volunteer is prohibited from any involvement, however cursory, in a case involving the firm's client or a party in opposition to the firm's client.

It is the opinion of the committee that where an employee has access to the files of a firm and the employee volunteers to assist a public interest firm, the conflicts of the firm are imputed to the public interest law firm.⁸ See, N.D. Rules Prof. Conduct, Rule 1.10 (1995).

CONCLUSION

Having declined representation of a potential client based on information obtained during an intake and application process, a public interest law firm which is later contacted by that potential client's opponent generally may represent the opponent in the same matter, but may not use information obtained from the potential client absent consent or the information becoming generally known. The public interest law firm may use a waiver or consent form to limit its obligations of confidentiality to a potential client, if the potential client gives consent to the waiver.

Where a public interest law firm enters into a contractual relationship with a private firm or lawyer, the terms of the contract control the nature of the relationship between the firms. If under Rule 1.10(d) of the N.D.R. Prof. Conduct the resulting relationship establishes a firm, screening cannot avoid an imputation of conflicts to both the public interest and the private firm.

Where one spouse is employed by a public interest law firm and one by a private firm on opposing sides of an issue, the issue as to conflict of interest is left to Rule 1.7 of the N.D.R. Prof.

⁸ The reverse would also be true. If the volunteer has even theoretical access to the files of the public interest law firm, any and all conflicts would have to be imputed to the volunteer's private employer as well.

Conduct and if there is a conflict it is imputed under the general imputation rule found at 1.10(d) of the North Dakota Rules of Professional Conduct.

Where a legal assistant or secretary volunteers with a public interest law firm and where that secretary or legal assistant has access to the general files of a law firm which employs him or her, all conflicts between the public interest firm and the private firm are imputed to both firms.

This opinion is provided pursuant to Rule 1.2(B), N.D.R. Lawyer Discipline, which 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 Hon. Ralph R. Erickson and Alice R. Senechal and was unanimously approved by the Committee on February 28, 1996.


Alice R. Senechal, Chair

[REDACTED]

December 8, 1995

Alice Senechel
Ethics Committee
%State Bar Association of North Dakota
P.O. Box 2136
Bismarck, ND 58502

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Dear Ms. Senechel:

Ethics Opinions 95-03 and 95-05 have generated a number of questions about the involvement of private corporate and government attorneys working with [REDACTED] to serve clients. While analyzing the [REDACTED] screening and intake process issues were also raised about whether callers could be referred to a private or government attorney, at what point information obtained becomes confidential and at what point an attorney/client relationship is established. There is a federal requirement that all persons contacting [REDACTED] for assistance must go through a specific intake eligibility process to determine if they are eligible for services. [REDACTED] must assist as many needy persons as possible within established legal, ethical and contractual parameters.

I have written three drafts of a letter setting out not only the issues, but the processes used by [REDACTED] with private attorneys who contract to do cases, as well as [REDACTED] general intake process. The letters were long and were almost as detailed as the handbooks that set out the process. Therefore, I am requesting that the following issues be reviewed and guidance provided based on the [REDACTED] procedures as set out in the attached relevant excerpts from the handbooks.

Intake and Screening Process ¹

Issue 1) If the financial eligibility screening during intake is done by a secretary, and the determination is that the client is not financially eligible, and the client is referred to the SBAND LRS, should a public interest law firm treat that as having established an attorney/client privilege? If the answer is yes, then if the other party calls in and is financially eligible the applicant/caller must be denied services due to a conflict of interest and an otherwise eligible client does not get help unless a volunteer lawyer is secured.

Does the answer change if the financial screening is done by a secretary, but the financial eligibility determination is "staffed" by legal staff at a staff meeting to ensure the appropriate decision was made?

[REDACTED] [REDACTED] [REDACTED]

Issue 2) If the secretary conducts a brief screening for the legal problem and financial eligibility and determines that it is not the type of case that the public interest law firm accepts and refers the person to SBAND or other entity for assistance, would that constitute establishment of an attorney/client privilege so as to preclude a second person related to the case from being helped in the same or a substantially related matter? (For example, the first contact is on a divorce which is referred out and not handled by the public interest law firm, but in which custody was an issue. The second contact by the other party is on a custody modification in the same matter.)

Does the answer change if the screening was staffed as above by legal staff - an attorney or paralegal rather than a secretary? Malpractice avoidance advisers recommend standard advice be provided to persons not accepted for representation regarding timelines, potential claims, etc., which should not usually done by secretarial staff. [REDACTED] has to balance streamlining of the intake process for time resources reasons, with adequate legal problem identification, legal malpractice avoidance practices and conflicts screening requirements. It always results in less clients being served.

Issue 3) If extremely brief screening on finances and the type of problem is done by the secretary, but then the person speaks with a paralegal about the facts of the case, and then the decision is made that the public interest law firm cannot handle the case, would that bar a followup client in the same or substantially related matter from obtaining assistance?

Issue 4) Would a boiler-plate disclosure and consent form be an acceptable cure to conflicts under the various situations set out above if it identified standard screening conflicts for non accepted cases in the disclosure with a way to identify which of these conflicts applied? The new applicant would be available to sign a consent, but does the former unsuccessful applicant need to be located and sign a disclosure and consent as well? There are no time lines which nullify a conflict under the North Dakota Rules of Professional Conduct. If the Ethics Committee determines a conflict exists as a result of a screening process in which no work was done for the applicant and the initial applicant has to sign a consent as well, can a time line be developed by the firm after which only a followup applicant could need to sign a consent?

Involvement with Private Practitioners

In contracts with private law firms, firms agree to complete the case referred, report action taken in monthly in billing statements, to cover a hearing for the public interest law firm in an emergency situation and receive technical assistance and backup from the public interest law firm. The activities just listed, other than the contract attorney working on an assigned case, are rarely conducted.

Issue 5) Is the contractual arrangement one which requires imputation of conflict of all of contractor law firm's cases with all cases of public interest law firm, or can the public interest law firm screen for conflicts and if none, before a formal referral to contractor's law firm, a conflicts screening by that firm?

Issue 6) If the contracting attorney is a part time states attorney as well as engaging in private practice, is there a potentially inherent conflict of interest? Can screening address conflict

problems or is there an automatic imputation of commonality of knowledge that could not be solved in case by case screening?

In the drafting of the current North Dakota Rules of Professional Conduct (N.D.R.P.C.) Rule 1.8, a provision contained in the ABA Model Rules was eliminated. That provision stated that spouses can not represent opposing parties in a case without a consent from the client after consulting with the client. Disqualification of one or both of the spouses is not imputed to the firm as a whole. The North Dakota Supreme Court Attorney Standards Committee intentionally omitted that section from Rule 1.8 on the grounds that attorneys of close familial relations are professionals and should be able to practice as such. Client consent should not dictate attorney's participation.

Issue 7) If one spouse is employed by a public interest law firm and the other spouse by a states attorney's office or private law firm and they learn they are representing opposing sides of a case, or one is involved in a civil case which impacts on a criminal action that the other is involved with, is a consent after consultation required? Is there any imputation to either of the law firms?

Issue 8) If a legal assistant or secretary volunteers to help a public interest law firm in its law office, is there imputation of knowledge of cases from the volunteer's law firm employer to the public interest law firm and vice versa that can not be overcome by a screening process?

The issues presented in this letter are numerous, but critical to fulfilling [REDACTED] responsibilities under its federal grants yet doing so in a manner that does not violate the North Dakota Rules of Professional Conduct. The timing is critical because federal funders require that 12.5% of funds be spent involving the private bar (in the broadest sense of the term) in the delivery of quality legal services to the poor. A new condition of receiving funds is that grantees must assure that there are no relationships which result in other than unavoidable and extremely minimal conflicts with the client population. [REDACTED] purpose is to deliver legal aid services to the poor in North Dakota. There are many more who need help than [REDACTED] has resources. Therefore it is my responsibility to ensure [REDACTED] is structured to assist as many people as possible, because most of the people turned away don't get assistance and their problems generally worsen. Federal requirements to assure services are provided only to those who are deemed eligible result in a unique set of issues for legal aid programs.

Your patience and assistance in helping to sort out and properly address these issues is greatly appreciated.

Sincerely,

[REDACTED]

enclosures