

August 12, 1997

Alice Senechal
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State Bar Association Ethics Committee
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Dear Alice:

In response to our telephone conversation of today's date, I am writing to ask guidance of the Ethics Committee with a problem I am currently facing. In the early 1990's, I represented a client who was being incarcerated in North Dakota under an out-of-state contract. I assisted this client in finding placement at another out-of-state facility, as well as with an investigation of some activities that had occurred at the North Dakota State Penitentiary during her period of incarceration.

Following that time, I continued to keep in contact with the client to assist her when I could. This individual was in need of support. Although I wasn't able to assist her with any of her other legal matters as I was not licensed in her state of origin, I attempted to help her locate other individuals to assist her or to provide others, at her request, with information that I had gained while working with her.

Another individual, who is not an attorney, under the premise of assisting her, created some difficulties for her. This individual had refused to return certain items of property both personal and real to her. I had made an effort to get him to return this property with no success. After he was contacted by the County Sheriff's office where he resided, he agreed to return the materials. As my former client was unable to take these materials at the facilities where she is currently residing, I agreed that the materials could be housed at my office.

Subsequently, the items of personal property were released at her request to another individual. I have repeatedly requested that she find a home for the remainder of her property. To date, she has stated that she has been unable to find a home for her property.

For the last several months, she has requested that I go through the boxes, pick out specific documents and forward them to her current attorney. I have told her repeatedly that I am not comfortable going through these boxes and taking out these items.

During the time I have had the boxes in my possession, she had requested that certain items be turned over to a non-attorney. At her request, I allowed this individual to remove items she had requested by release. I did not independently review the contents of the boxes. I merely insured that the items taken conformed with those specified in her authorization for release.

As with the non-attorney review, I have suggested that she have her attorney go through the boxes and that I would again verify that the items being taken are conform to those in her Authorization for Release. I also suggested that she forward all of the materials either to her current attorney or to another individual, who in the past she had great confidence in. She has declined all of these suggestions and continues to demand that I go through the boxes and locate specified materials for forwarding to her current attorney.

I am concerned that by going through the boxes myself and releasing this information absent a third-party, I am opening myself up to liability. Rule 1.15 of the Rules of Professional Conduct provides guidance on safekeeping of property. However, Rule 1.15 does not address materials outside the scope of representation.

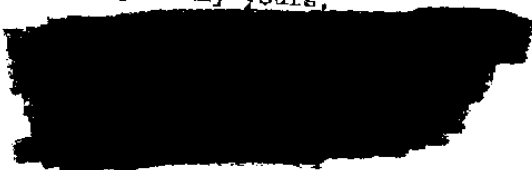
Regardless of my status as an attorney or a friend, I understand that I have an ethical duty to safeguard the materials. However, I am concerned that piece-meal delivery of these items may result in further liability on my part. Please advise as to whether I should go through these boxes and send out the individual items as she is requesting or if I'm correct in asking that the materials be sent out in their current box lots.

In addition, if she refuses to take the property or to provide me with an address as to where it can be sent, what are my responsibilities concerning the future holding of said property. In reviewing Rule 1.15, I am unclear as to the scope of my responsibility concerning the safekeeping of materials I allowed to be housed in my office which as I previously indicated were outside the scope of my representation of her.

Are there other rules I am missing that address these issues? I would appreciate any guidance you can provide.

Awaiting your response.

Very truly yours,



STATE BAR ASSOCIATION OF NORTH DAKOTA ETHICS COMMITTEE

Opinion No. 97 - 10

September 4, 1997

The Committee received a request for an opinion as to a lawyer's responsibilities regarding certain personal property of a client,¹ which is in the lawyer's possession, and which the lawyer describes as being materials "outside the scope of [the lawyer's] representation" of the client.

FACTS

The requesting lawyer currently has possession of boxes of personal property belonging to a client of the requesting lawyer. The client is incarcerated at a facility outside of North Dakota, and is unable to have possession of at least part of the personal property while at that facility. The requesting lawyer agreed that the personal property could be stored at the lawyer's office, but the requesting lawyer has never inventoried the boxes of property. From the letter of request, it is not clear whether the requesting lawyer knows what is contained in the boxes of personal property.

During the time the requesting lawyer has stored the property, at the client's request and with the client's authorization, certain items of the personal property have been removed by and released to another individual, with the requesting lawyer confirming that the items released were those specified by the client. The requesting lawyer has now asked that the client authorize forwarding all of the personal property to either another lawyer or to another individual, but the client has not authorized forwarding of the personal property in its entirety. Rather, the client has requested that the lawyer locate specified materials within the boxes of personal property and forward only those specified materials to another lawyer. The requesting lawyer seeks the Committee's guidance on following the client's request. The requesting lawyer further asks for guidance as to responsibilities for retaining the personal property into the future.

DISCUSSION

N.D.R. Prof. Conduct 1.15 sets out responsibilities for safeguarding property of clients or third persons. It provides that a lawyer shall hold that property separate from the

1. The requesting lawyer's letter uses language which both suggests that the client involved is a current client, and that the client involved is a former client. For purposes of the questions presented, the distinction between current client and former client does not appear determinative of any issues. Therefore, this opinion will simply refer to "the client," without distinguishing the status as current client or former client.

lawyer's own property, and that the property "shall be identified as such and appropriately safeguarded." Rule 1.15(a). N.D.R. Prof. Conduct 1.16 provides that when a representation is terminated, the lawyer "shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled."

The Rules of Professional Conduct include no provision which would prohibit the requesting lawyer from following the client's request to locate and forward specified items of the client's personal property, which the lawyer had earlier agreed to store for the client, when forwarding that property to another person is authorized by the client. As to the requesting lawyer's responsibilities to retain the personal property in light of the client's refusal to authorize it being forwarded in its entirety to someone else, the Committee refers the requesting lawyer to an earlier opinion, No. 92-11, which discusses disposition of client files after a representation has been terminated.

CONCLUSION

Following a client's request for forwarding specified items of a client's personal property to another person does not violate the Rules of Professional Conduct.

This opinion no. 97-10 is provided pursuant to N.D.R. Law. Discipline 1.2(B), which provides:

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 Alice R. Senechal, and was unanimously adopted by the Committee on September 4, 1997.



Alice R. Senechal, Chair