May 2, 1989

Re: Ethics Committee Opinion

Dear [Name]

The Ethics Committee of the State Bar Association of North Dakota at its meeting on May 1, 1989, discussed your letter of March 31st.

We believe the fee arrangement which you propose in your letter is permissible so long as that arrangement is in accordance with Rule 1.5 in general and in particular Rule 1.5(c) of the North Dakota Rules of Professional Conduct.

We hope this letter is of some assistance to you in conducting your practice in compliance with the rules.

Sincerely,

Patrick J. Ward, Chairman,
Ethics Committee, State Bar Association of North Dakota
March 31, 1989

Mr. Patrick Ward
P.O. Box 1695
Bismarck, ND 58502-1695

Re: Ethics Committee Opinion Request

Dear Pat:

Pursuant to our telephone conversation yesterday, I am submitting an ethic opinion request.

The basic question is whether an attorney at law in North Dakota may accept a real estate referral fee or commission, in conjunction with performing related legal services?

The facts are essentially as follows. An attorney is engaged to prepare a purchase agreement, and prepare or review other legal documents as required by a proposed commercial real estate purchase. The client requests that the attorney present the purchase agreement to seller's realtor and explain and/or negotiate the document and purchase as necessary and incidental to his role as purchaser's attorney.

Purchaser, seller and seller's realtor subsequently agree that purchaser's attorney should receive 25% of the real estate commission for his role in the transaction.

Does your committee have a problem with this arrangement?

It appears to me that this type of arrangement should be acceptable in North Dakota. First, North Dakota law exempts attorneys from the real estate broker licensing requirement. N.D. Century Code §43-23-07. Second, similar arrangements have been considered by courts in various states that have attorney exemptions. The majority view appears to be that such arrangements are acceptable when the real estate services are performed as an incidental part of or in conjunction with the performance of related legal services. See 23 ALR 4th 230 and enclosed supplement copy.

Let me know if you require any further information.

Respectfully submitted,
payor bank dishonored check but did not return it until after clearinghouse's 1:00 p.m. deadline for "return items," court held (1) that under UCC § 4-213(1) and Official Comment 6, payor bank's failure to invoke provisional settlement for check and return check by clearinghouse's 1:00 p.m. deadline constituted "final payment" of check; (2) that under UCC § 4-301(4)(a), items received through clearinghouse can be returned only in accordance with clearinghouse rules; (3) that although UCC § 4-103(1) provides that effect of Article 4 can be varied by agreement, clearinghouse rules under UCC § 4-103(2) have effect of "agreement" within meaning of UCC § 4-103(1) and thus supersede code's statutory provisions; and (4) that as a result of such an agreement, payor bank's 1:00 p.m. deadline for "return items" was not limited by reliance requirements.

For latest cases, call the toll free number appearing on the cover of this supplement.


23 ALR4th 251-264

§ 1. Introduction

(b) Related matters

VERALEX® Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME®. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

3. Statements failing to use precise language of rule

Rule governing admonishments, which stated, inter alia, that before accepting plea of guilty court had to tell defendant that he was waiving right to jury trial and right to be confronted by witnesses against him, required only substantial compliance; thus, defendant's contentions that admonishments were inadequate as lacking, inter alia, warning that he was waiving right to confront his accusers and explanation of what jury trial entailed were without merit since first omission did not constitute substantial defect and second concern was not covered by rule and not requiring admonition. People v Stare (1987), 5th Dist 159 Ill App 3d 132, 112 Ill Dec 49, 513 NE2d 463.

Failure of trial court to strictly comply with language of statute in advising defendant that by pleading guilty he was admitting truth of all allegations was error, but entry of plea of guilty court would proceed with judgment and sentence warranted reversal. Sexton v State (1989, Ind) 455 NE2d 910.

To Jones v State (1985, Ind) 479 NE2d 599.

§ 4.

Trial judge adequately informed defendant of his right to public trial, despite his failure to use specific language of applicable statute, where he told defendant he had right to early and speedy trial with 12 people, that he could not be convicted unless all 12 members of jury agreed on his guilt, and that he had right to confrontation and cross-examine state's witnesses in his defense. Parker v State (1966, Ind) 250 NE2d 199.

Trial court erred in failing to specifically advise defendant of right to have witnesses present at trial because accepting guilty plea, even though court advised that there was right to trial and accompany were accepted, inquired with had questions about trial right he had advised client of statutory rights, and defendant guilty. People v Richardson (1966, Ind) 256 NE2d 167.

§ 5.

Statements in context of waiver form

Defendant's guilty plea was intelligent, notwithstanding he advise him explicitly, inter alia right to public and speedy trial, told him he was waiving his right to trial and did not know what he was waiving, asked his advice of his right to speedy trial by jury, and require special use of words