

**STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE**

Opinion No. 05-08

The requesting attorney (an Assistant State's Attorney) seeks the Committee's guidance relating to a gift received from a victim.

I. FACTS.

An Assistant State's Attorney (ASA) sent a letter requesting an opinion or advisory letter from the Ethics Committee. The request stated that the ASA was involved in a jury trial where the allegations involved an assault and burglary. The defendant was found guilty by a jury and, at the time of the request, a sentencing hearing was scheduled. Following the jury trial and the guilty verdict, the victim in the case dropped off a card for both the ASA and a victim/witness advocate who assisted the victim. The card thanked both the ASA and the advocate for the work they put into the case, and enclosed within the card was a \$30 gift certificate. The request asked what the ASA's ethical obligation is regarding acceptance of the gift certificate.

II. DISCUSSION.

The issue is whether the ASA may accept the gift certificate. It does not appear to the Committee that any of North Dakota's Rules of Professional Conduct address this issue. It does appear to the Committee, however, that N.D.C.C. § 11-16-05 may address this issue and the requesting attorney is directed to that section. It is not the Committee's duty, or within its power, to interpret the North Dakota Century Code but to interpret and apply the North Dakota Rules of Professional Conduct. If the ASA has a

concern with respect to compliance with a statute, the Committee suggests that an Attorney General's opinion be requested with respect to issues surrounding the interpretation of that statute. The Committee also suggests that the ASA be aware that a violation of the Century Code may be considered misconduct under Rule 8.4 of the Rules of Professional Conduct.

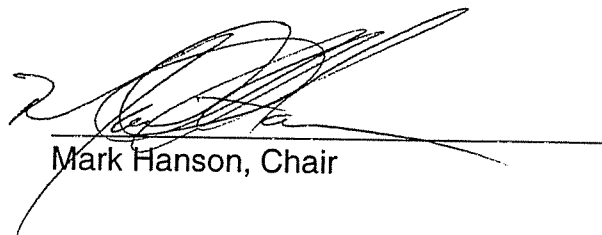
III. CONCLUSION.

North Dakota's Rules of Professional Conduct do not address the request from the ASA.

This opinion is provided pursuant to North Dakota Rule for Lawyer 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 Anthony J. Weiler and was adopted by the Committee on October 18, 2005, by a majority vote.



Mark Hanson, Chair