

IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law, in her  
individual and official capacity,

Defendant.

**MOTION FOR JUDGMENT  
ON THE PLEADINGS**

**Civil Case No. A2-04-1**


Defendant, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, moves the Court for an order dismissing the Amended Complaint against her. This motion is made on the ground that the Amended Complaint fails to state a claim upon which relief can be granted and is supported by the attached Brief in Support of Motion for Judgment on the Pleadings.

Defendant respectfully requests that the Court enter an order dismissing with prejudice the Amended Complaint against her.

Dated this 29<sup>th</sup> day of April, 2004.

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## TABLE OF CONTENTS AND AUTHORITIES

	<u>Page(s)</u>
Statement of the Case .....	1
Argument .....	2
<u>Westcott v. City of Omaha,</u> 901 F.2d 1486 (8 <sup>th</sup> Cir. 1990).....	2
<u>St. Paul Ramsey County Med. Ctr. V. Pennington County,</u> 857 F.2d 1185 (8 <sup>th</sup> Cir. 1988).....	2
<u>Karch v. Equilon Enters. L.L.C.,</u> 286 F. Supp. 2d 1075 (D.N.D. 2003).....	2
I. The Amended Complaint fails to state a claim under the “unconstitutional conditions” doctrine .....	2
<u>Speiser v. Randall,</u> 357 U.S. 513 (1958) .....	2
<u>Sherbert v. Verner,</u> 374 U.S. 398 (1963) .....	2
<u>Shapiro v. Thompson,</u> 394 U.S. 618 (1969) .....	2
<u>Goldberg v. Kelly,</u> 397 U.S. 254 (1970) .....	2
<u>Perry v. Sindermann,</u> 408 U.S. 593 (1972) .....	2
<u>Slochower v. Board of Higher Educ.,</u> 350 U.S. 551 (1956) .....	2
<u>Wieman v. Updegraff,</u> 344 U.S. 183 (1952) .....	3
<u>Board of County Comm’rs v. Umbehr,</u> 518 U.S. 668 (1996) .....	3
<u>Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,</u> 429 U.S. 274 (1977) .....	3
A. Representation by the Clinic does not constitute a “valuable governmental benefit” .....	3

<u>Speiser v. Randall</u> , 357 U.S. 513 (1958) .....	3
<u>Perry v. Sindermann</u> , 408 U.S. 593 (1972) .....	3
<u>Board of County Comm'rs v. Umbehr</u> , 518 U.S. 668 (1996) .....	4-5
<u>Prisma Zona Exploratoria De Puerto Rico Inc. v. Calderon</u> , 162 F. Supp. 2d 1 (D. Puerto Rico 2001), <u>aff'd</u> , 301 F.3d 1 (1 <sup>st</sup> Cir. 2002), <u>cert. denied</u> , 538 U.S. 999 (2003) .....	5
<u>Board of County Comm'rs v. Umbehr</u> , 518 U.S. 668 (1996) .....	5
<u>McClintock v. Eichelberger</u> , 169 F.3d 812 (3d Cir.), <u>cert. denied</u> , 528 U.S. 876 (1999) .....	5
B. The Clinic did not deny Wishnatsky's request for representation because of his speech .....	6
<u>Board of County Comm'rs v. Umbehr</u> , 518 U.S. 668 (1996) .....	6
<u>Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle</u> , 429 U.S. 274 (1977) .....	6
1. The requested representation was denied due to lack of resources .....	6
<u>In re. K-Tel Int'l, Inc. Sec. Litig.</u> , 300 F.3d 881 (8 <sup>th</sup> Cir. 2002) .....	6
<u>Silver v. H&amp;R Block, Inc.</u> , 105 F.3d 394 (8 <sup>th</sup> Cir. 1997) .....	6
<u>Roedler v. United States Dep't of Energy</u> , NO. CIV. 98-1843, 1999 WL 1627346 (D. Minn. Dec. 23, 1999), <u>aff'd</u> , 255 F.3d 1347 (Fed. Cir. 2001), <u>cert. denied</u> , 534 U.S. 1056 (2001) .....	6
<u>Jakobe v. Rawlings Sporting Goods Co.</u> , 943 F. Supp. 1143 (E.D. Mo. 1996) .....	6-7
<u>Brogren v. Pohlad</u> , 933 F. Supp. 793 (D. Minn. 1995) .....	7

<u>Board of County Comm'rs v. Umbehr,</u> 518 U.S. 668 (1996) .....	7
<u>Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,</u> 429 U.S. 274 (1977) .....	7
2.    Speech is not the motivating factor of a decision based on ethical obligations .....	7
C.    The Clinic's legitimate interests in complying with ethical obligations outweigh any speech interests at stake .....	9
<u>Board of County Comm'rs v. Umbehr,</u> 518 U.S. 668 (1996) .....	9
<u>O'Hare Truck Serv., Inc. v. City of Northlake,</u> 518 U.S. 712 (1996) .....	10
II.    The requested injunctive relief is inappropriate .....	10
A.    General injunctions are prohibited .....	11
Fed. R. Civ. P. 65(d) .....	11
<u>Calvin Klein Cosmetics Corp. v. Parfums de Coeur, Ltd.,</u> 824 F.2d 665 (8 <sup>th</sup> Cir. 1987) .....	11
<u>Rogers v. Scurr,</u> 676 F.2d 1211 (8 <sup>th</sup> Cir. 1982) .....	11
<u>Fielder v. Credit Acceptance Corp.,</u> 188 F.3d 1031 (8 <sup>th</sup> Cir. 1999) .....	11
B.    Forced representation is inappropriate .....	12
<u>Goldsmith v. Pyramid v. Communications, Inc.,</u> 362 F. Supp. 694 (S.D.N.Y. 1973) .....	12
<u>Fisher v. State,</u> 248 So.2d 479 (Fla. 1971) .....	12
1.    The requested relief would adversely impact the Clinic's other clients .....	12
2.    An attorney should not be compelled to violate her professional standards .....	13

<u>United States v. Oberoi,</u> 331 F.3d 44 (2d Cir. 2003) .....	13
<u>Chaleff v. Superior Court,</u> 138 Cal. Rptr. 735 (Cal Ct. App. 1977) .....	13
<u>In re Anonymous Member of the Bar,</u> 379 S.E.2d 723 (S.C. 1989) .....	14
III.    The Clinic is entitled to summary judgment.....	14
Fed. R. Civ. P. 12(c) .....	15
A.    This case is appropriate for summary judgment.....	15
<u>Celotex Corp. v. Catrett,</u> 477 U.S. 317 (1986) .....	15
<u>Vacca v. Viacom Broad. Of Mo., Inc.,</u> 875 F.2d 1337 (8 <sup>th</sup> Cir. 1989) .....	15-16
<u>Olson v. Pennzoil Co.,</u> 943 F.2d 881 (8 <sup>th</sup> Cir. 1991) .....	15
<u>Anderson v. Liberty Lobby, Inc.,</u> 477 U.S. 242 (1986) .....	16
<u>Westchem Agric. Chems., Inc. v. Ford Motor Co.,</u> 990 F.2d 426 (8 <sup>th</sup> Cir. 1993) .....	16
<u>Elbe v. Yankton Indep. Sch. Dist. No. 1,</u> 714 F.2d 848 (8 <sup>th</sup> Cir. 1983) .....	16
B.    Wishnatsky's request for representation would have been denied regardless of his speech.....	17
<u>Board of County Comm'rs v. Umbehr,</u> 518 U.S. 668 (1996) .....	17
1.    The request would have been denied because the Civil Rights Project did not have the resources to take on another lawsuit.....	17
2.    The request would have been denied for pedagogical reasons .....	19
<u>Glassroth v. Moore,</u> 335 F.3d 1282 (11 <sup>th</sup> Cir. 2003), cert. denied, 124 S.Ct. 497 (2003) .....	19-20

<u>Freethought Soc'y v. Chester County,</u> 334 F.3d 247 (3 <sup>rd</sup> Cir. 2003) .....	19
<u>Christian v. City of Grand Junction,</u> No. 01-CV-685, 2001 WL 34047958 (D. Colo. June 27, 2001) .....	19
<u>Suhre v. haywood County, N.C.,</u> 55 F. Supp. 2d 384 (W.D.N.C. 1999) .....	20
<u>State v. Freedom From Religion Found.,</u> 898 P.2d 1013 (Colo. 1995), <u>cert. denied</u> , 516 U.S. 1111 (1996) .....	20
<u>Anderson v. Salt Lake City Corp.,</u> 475 F.2d 29 (10 <sup>th</sup> Cir. 1973), <u>cert. denied</u> , 414 U.S. 879 (1973) .....	20
<u>Adland v. Russ,</u> 307 F.3d 471 (6 <sup>th</sup> Cir. 2002), <u>cert. denied</u> , 538 U.S. 999 (2003) .....	20
<u>Indiana Civil Liberties Union v. O'Bannon,</u> 259 F.3d 766 (7 <sup>th</sup> Cir. 2001), <u>cert. denied</u> , 534 U.S. 1162 (2002) .....	20
<u>Book v. City of Elkhart, Ind.,</u> 235 F.3d 292 (7 <sup>th</sup> Cir. 2000), <u>cert. denied</u> , 532 U.S. 1058 (2001) .....	20
<u>Mercier v. City of La Crosse,</u> 276 F. Supp. 2d 961 (W.D. Wis. 2003) .....	20
<u>ACLU of Ohio Found. v. Ashbrook,</u> 211 F. Supp. 2d 873 (N.D. Ohio 2002).....	20
<u>Kimbley v. Lawrence County, Ind.,</u> 119 F. Supp. 2d 856 (S.D. Ind. 2000) .....	20
<u>ACLU of Ky. v. McCreary County, Ky.,</u> 96 F. Supp. 2d 679 (E.D. Ky. 2000) .....	20
<u>ACLU of Ky. . Pulaski County Ky.,</u> 96 F. Supp. 2d 691 (E.D. Kyl 2000) .....	20
<u>Harvey v. Cobb County, Ga.,</u> 811 F. Supp. 669 (N.D. Ga. 1993) .....	20
<u>Wishnatsky v. Schuetzle,</u> 141 F.3d 1172 (8 <sup>th</sup> Cir. 1998) .....	21



<u>Wishnatsky v. Huey,</u> 584 N.W.2d 859 (N.D. 1998).....	21
<u>Wishnatsky v. Huey,</u> 560 N.W.2d 878 (N.D. 1997).....	21
<u>State ex rel. Heitkamp v. Family Life Servs. Inc.,</u> 560 N.W.2d 526 (N.D. 1997).....	21
<u>Wishnatsky v. Bergquist,</u> 550 N.W.2d 394 (N.D. 1996).....	21
<u>State v. Wishnatsky,</u> 491 N.W.2d 733 (N.D. 1992).....	21
<u>State v. Wishnatsky,</u> 609 A.2d 79 (N.J. Sup. Ct. 1990).....	21
<u>Wishnatsky v. Vandewalle,</u> NO. CIV A1-997-72, 1998 WL 1780612 (D.N.D. April 17, 1998).....	21
<u>Kirkeby v. Furness,</u> 92 F.3d 655 (8 <sup>th</sup> Cir. 1996).....	21
<u>Vanyo v. Fargo Women's Health Org., Inc.,</u> 65 F.3d 173 (8 <sup>th</sup> Cir. 1995).....	21
<u>Cooper v. City of Fargo,</u> 2002 WL 1483883 (D.N.D. Mar. 29, 2002).....	21
<u>Veneklase v. City of Fargo,</u> No. CIV. A3-93-156, 1998 WL 1780688 (D.N.D. Mar. 31, 1998).....	21
C. The Clinic's legitimate interests in complying with ethical obligations outweigh any speech interests at stake .....	22
1. The Clinic has a legitimate, overriding interest in avoiding conflicts of interest and protecting the attorney-client relationship.....	22
a. Facts creating conflict of interest.....	22
b. Obligation to avoid conflicts of interest.....	25
<u>Wolgin v. Smith,</u> NO. CIV. A. 97-7471, 1996 WL 482943 (E.D. Pa. Aug. 21, 1996) .....	26-27

<u>Fisher v. State,</u> 248 So.2d 479 (Fla. 1971).....	26
<u>Augustson v. Linea Aerea nacional-Chile S.A.,</u> 76 F.3d 658 (5 <sup>th</sup> Cir. 1996) .....	27
<u>Sobol v. District Court,</u> 619 P.2d 765 (Colo. 1980) .....	27
<u>Ashker v. International Bus. Mach. Corp.,</u> 607 N.Y.S.2d 488 (N.Y. App. Div. 1994) .....	27
<u>McGuire v. Wilson,</u> 735 F. Supp. 83 (S.D.N.Y. 1990) .....	27
<u>Kolomick v. Kolomick,</u> 518 N.Y.S.2d 413 (N.Y. App. Div. 1987) .....	27
<u>Connick v. Myers,</u> 461 U.S. 138 (1983) .....	27-28
2. The Clinic has a legitimate, overriding interest in protecting academic freedom and professional judgment.....	28
<u>Grutter v. Bollinger,</u> 123 S.Ct. 2325 (2003) .....	28
<u>An Ethics Critique of Interference in Law School Clinics,</u> 71 Fordham L. Rev. 1971 (2003) .....	28-29
Conclusion .....	29

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## STATEMENT OF THE CASE

On January 5, 2004, Martin Wishnatsky (Wishnatsky) filed a Complaint with the United States District Court, District of North Dakota. The Complaint names as defendant Laura Rovner, Director, Clinical Education Program, University of North Dakota School of Law, in her individual capacity Professor Rovner). An Amended Complaint was filed on January 27, 2004. The Amended Complaint names Professor Rovner in both her individual and official capacities.

The Amended Complaint alleges that Professor Rovner is the Director of the Clinical Education Program at the University of North Dakota School of Law.<sup>1</sup> Am. Compl. ¶ 2. According to the Amended Complaint, by letter dated October 29, 2003, Wishnatsky requested that the Clinic represent him “in a lawsuit challenging the statue of the goddess Themis on the Grand Forks County Courthouse as an unconstitutional establishment of religion.” Id. ¶ 4. The Amended Complaint asserts that Wishnatsky’s request for representation was denied by letter dated November 12, 2003, which explained that “the ‘ethical obligations’ of the Clinic under the North Dakota Rules of Professional Conduct prohibited such representation.” Id. ¶ 5. The Clinic’s ethical obligations prohibited the representation because of Wishnatsky’s “persistent and antagonistic actions” against the Clinic and its staff. Id.

The Amended Complaint asserts the Clinic’s decision not to represent Wishnatsky violated “the Free Speech and Equal Protection Clauses of the United States Constitution.” Id. ¶ 7. The Amended Complaint requests a declaration that the Clinic unconstitutionally limited Wishnatsky’s access to the services of the Clinic, and an injunction prohibiting such conduct in the future. Id. ¶ 8.

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<sup>1</sup> Unless identified otherwise, Defendant will be referred to as the Clinic, which includes the UND Law School Clinical Education Program and Professor Rovner individually.

## ARGUMENT

A defense of failure to state a claim may be raised in a Rule 12(c) motion for judgment on the pleadings. Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8<sup>th</sup> Cir. 1990); St. Paul Ramsey County Med. Ctr. v. Pennington County, 857 F.2d 1185, 1187 (8<sup>th</sup> Cir. 1988). A motion for judgment on the pleadings should be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Karch v. Equilon Enters. L.L.C., 286 F. Supp. 2d 1075, 1077 (D.N.D. 2003). When considering a motion for judgment on the pleadings, the court should construe the complaint in the light most favorable to the plaintiff, the allegations in the complaint being taken as true. Id.

The allegations in the Amended Complaint are simple and straightforward. Accepting those allegations as true, the Amended Complaint fails to state a claim upon which relief can be granted.

**I. The Amended Complaint fails to state a claim under the “unconstitutional conditions” doctrine.**

The Amended Complaint appears to be based on the “unconstitutional conditions” doctrine. Under that doctrine, the government may not deny a valuable governmental benefit to a person on a basis that infringes on the person’s constitutionally protected freedom of speech, even if the individual has no right to the benefit. See Speiser v. Randall, 357 U.S. 513, 525-26 (1958). This general principle has been applied to denial of tax exemptions, id., disqualification for unemployment benefits, Sherbert v. Verner, 374 U.S. 398, 404-05 (1963), denial of welfare payments, Shapiro v. Thompson, 394 U.S. 618, 627 n.6 (1969), withdrawal of welfare benefits, Goldberg v. Kelly, 397 U.S. 254 (1970), discharge from public employment, Perry v. Sindermann, 408 U.S. 593 (1972); Slochower v. Board of Higher Educ., 350 U.S. 551 (1956); Wieman v.

Updegraff, 344 U.S. 183, 192 (1952), and termination of government contracts, Board of County Comm'rs v. Umbehr, 518 U.S. 668 (1996).

The First Amendment does not create property rights or guarantee absolute freedom of speech. Umbehr, 518 U.S. at 675. To state a free speech claim under the “unconstitutional conditions” doctrine, the speech at issue must be constitutionally protected, and the protected speech must be a substantial or motivating factor in the decision. Id. No liability exists if the same action would have been taken even in the absence of the protected speech. Id.; Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977). “And even [action] because of protected speech may be justified when legitimate countervailing government interests are sufficiently strong.” Umbehr, 518 U.S. at 675. The government’s interest in efficiently and properly performing its services must be considered and given deference. Id. at 678. In the context of government employment cases, the Court has observed that the test the Court has established “must be judicially administered with sensitivity to governmental needs . . . .” Id. Thus, to state a claim, the Amended Complaint must allege that Clinic denied Wishnatsky a valuable governmental benefit, and that the denial of that benefit was motivated by his protected speech. Id. at 685. If the action would have been taken regardless of his speech, or if the Clinic’s legitimate interests as an education program, deferentially viewed, outweigh the free speech interests at stake, the Amended Complaint fails. Id.

A. Representation by the Clinic does not constitute a “valuable governmental benefit.”

An initial requirement under the unconstitutional conditions doctrine is that the individual be denied a “valuable governmental benefit.” Speiser, 357 U.S. at 526; Perry, 408 U.S. at 597. The contours of what constitutes a “valuable governmental benefit” is

unclear. The controlling precedent demonstrates, however, that the Clinic's decision not to represent Wishnatsky did not deny Wishnatsky a "valuable governmental benefit."

The purpose of the Clinic is to educate law students, who earn academic credit for completing clinic courses. The Clinic provides practical opportunities for students to learn the practice of law, along with classes designed to explore the broader implications of being a lawyer. The primary purpose of the Clinic is not to provide members of the public the benefit of legal services. Thus, any legal services provided by the Clinic are not statutory entitlements, like tax exemptions and welfare payments. Tax exemptions and welfare payments are provided to all members of the public based upon specific statutes, regulations or guidelines. The Clinic's legal representation of clients is based on students' educational needs and resources. There is no entitlement or expectation by the public to receive legal representation.

The Clinic declining to represent an individual is also unlike terminating government employment or a pre-existing government contract. Under those circumstances a prior relationship and expectations already exist. Such is not true when an individual requests representation by the Clinic. A current relationship or expectation of representation does not exist.

Representation by the Clinic does not constitute a "valuable governmental benefit." There is no statutory entitlement, and the purpose of the representation is not to provide a benefit to the public. It is to educate students. However, even if representation by the Clinic is deemed a "valuable governmental benefit," under Umbehr the Amended Complaint still fails to state a claim because Wishnatsky did not have a pre-existing attorney-client relationship with the Clinic.

The Umbehr Court emphasized the limited nature of its holding. The Court specifically explained that the case concerned the termination of a pre-existing relationship

with the government, and that the holding did not extend to suits by bidders or applicants for new government contracts. 518 U.S. at 685. Recognizing this distinction, lower courts have held the “unconstitutional conditions” doctrine only applies to pre-existing commercial relationships. For example, one federal court noted:

The Umbehr Court thus made it categorically clear that its holding did not apply to applicants or bidders for new government contracts, it only applies to those plaintiffs who can demonstrate that they have a pre-existing commercial relationship with the government. In Umbehr the Court refused to extend First Amendment protection to bidders or applicants for government contracts who do not have a pre-existing commercial relationship with the government.

Prisma Zona Exploratoria De Puerto Rico Inc. v. Calderon, 162 F. Supp. 2d 1, 7 (D. Puerto Rico 2001), aff’d, 301 F.3d 1 (1<sup>st</sup> Cir. 2002), cert. denied, 538 U.S. 999 (2003). Based on Umbehr, the Prisma Zona court held: “The First Amendment protects any entity or person (who has been denied a benefit on unconstitutional grounds) if that person has a pre-existing commercial relationship with the government.” Id. Similarly, McClintock v. Eichelberger, 169 F.3d 812 (3d Cir.), cert. denied, 528 U.S. 876 (1999), refused to extend First Amendment protection to a bidder or applicant for a government contract, noting that the Court in Umbehr carefully cabined its decision not to apply to bidders or applicants who do not have a pre-existing relationship. Id. at 817.

Wishnatsky did not have a pre-existing relationship with the Clinic. He is simply an individual who requested legal representation by the Clinic. Accordingly, the “unconstitutional conditions” doctrine does not apply to Wishnatsky.

The Clinic’s decision to decline representation, especially when no pre-existing attorney-client relationship existed, did not constitute a denial of a “valuable governmental benefit.” For this reason, the Amended Complaint fails to state a claim upon which relief can be granted.

B. The Clinic did not deny Wishnatsky's request for representation because of his speech.

Under the unconstitutional conditions doctrine, Wishnatsky has the burden to demonstrate protected speech was a "substantial" factor or the "motivating factor" in the Clinic's decision not to represent him. Umbehr, 518 U.S. at 675; Mt. Healthy, 429 U.S. at 287. The Amended Complaint fails to allege this essential element. Rather, the Amended Complaint and the referenced letter demonstrate Wishnatsky's request was denied because (1) the Clinic lacked the resources to represent Wishnatsky and (2) the requested representation would violate the Clinic's ethical obligations.

1. The requested representation was denied due to lack of resources.

Although paragraph 5 of the Amended Complaint references and quotes a portion of the Clinic's November 12, 2003, letter, the Amended Complaint ignores the reason given in the letter for not accepting Wishnatsky's request for representation. The letter states: "[D]ue to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time." Attach. 1.<sup>2</sup> The discussion in the letter regarding ethical issues was not the Clinic's

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<sup>2</sup> The full text of the Clinic's November 12, 2003, letter can properly be considered in this motion because it is referenced and quoted in the Amended Complaint, and because it is a matter of public record. The other attachments can also be considered because they are referenced in the Amended Complaint or are matters of public record. See In re. K-Tel Int'l, Inc. Sec. Litig., 300 F.3d 881, 889 (8<sup>th</sup> Cir. 2002) (stating that, in addition to the pleading, on motion to dismiss the court may consider materials embraced by the pleadings and materials that are part of public record); Silver v. H&R Block, Inc., 105 F.3d 394, 397 (8<sup>th</sup> Cir. 1997) (explaining a party "cannot defeat a motion to dismiss by choosing not to attach the full statements to the complaint"); Roedler v. United States Dep't of Energy, NO. CIV. 98-1843, 1999 WL 1627346, at \*4 (D. Minn. Dec. 23, 1999) ("In deciding a motion to dismiss under Rule 12(b)(6), the court may consider matters of public record. . . . In addition, the court may generally consider documents integral to the complaint and upon which the complaint relies, even when not attached to the complaint and produced instead by the defendant in support of a motion to dismiss."), aff'd, 255 F.3d 1347 (Fed. Cir. 2001), cert. denied, 534 U.S. 1056 (2001); Jakobe v. Rawlings Sporting Goods Co., 943 F. Supp. 1143, 1149 (E.D. Mo.



reason for denying Wishnatsky's request for representation. Although the ethical issues would prevent representation "if the lack of resources did not preclude the Clinic from representing" Wishnatsky, the lack of resources did preclude the requested representation and was the reason the Clinic denied Wishnatsky's request. Attach. 1.

As held in Umbehr and Mt. Healthy, no liability exists if the action would have been taken regardless of the speech. 518 U.S. at 675, 685; 429 U.S. at 287. As evidenced by the November 12, 2003, letter, referenced and quoted in the Amended Complaint, Wishnatsky's request for representation was denied because the Clinic lacked the resources to accept any new cases at that time. This reason for denying Wishnatsky's request for representation was unrelated to Wishnatsky's speech. Wishnatsky's request would have been denied regardless of his allegedly protected speech.

The Clinic's caseload and lack of resources precluded the Clinic from representing Wishnatsky. Because the Clinic declined Wishnatsky's request for representation for reasons unrelated to his statements regarding the Clinic and its faculty, the Amended Complaint fails as a matter of law.

2. Speech is not the motivating factor of a decision based on ethical obligations.

The Amended Complaint specifically alleges the Clinic denied Wishnatsky's request for representation because of the Clinic's "ethical obligations." Am. Compl. ¶ 5. According to the allegations, the ethical issue stemmed from Wishnatsky's "persistent and

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1996) (holding the court can consider, when ruling on a motion to dismiss, the full text of documents which are partially quoted and referred to in the complaint); Brogren v. Pohlad, 933 F. Supp. 793, 798 (D. Minn. 1995) (holding court may review documents referred to but not included with the complaint when submitted in support of motion to dismiss). Although not necessary for resolution of the Clinic's motion, the Court could properly consider any of the exhibits to Professor Rovner's affidavit, but not the affidavit itself, as part of the Clinic's motion without converting the motion into a motion for summary judgment. The exhibits are material embraced by the pleadings, see Amended Complaint ¶¶ 4-6, or matters of public record.

antagonistic actions” against the Clinic and its faculty. Id. The Amended Complaint then alleges Wishnatsky’s actions were public letters and commentary in the Grand Forks Herald, implying they constitute protected speech. Id. ¶ 6.

The allegation that the Clinic denied Wishnatsky’s request for representation due to ethical obligations is inconsistent with the Clinic’s November 12, 2003, letter, which demonstrates Wishnatsky’s request was denied because the Clinic lacked the resources to undertake the requested representation. Attach. 1. Even if the Clinic did deny the request because of its ethical obligations, however, the Amended Complaint would still fail to state a claim. Declining to represent Wishnatsky because of ethical obligations is not a decision motivated by protected speech.

There is no allegation that the Clinic declined representation to suppress Wishnatsky’s speech; the decision was allegedly based on the Clinic’s ethical obligations. The fact that it is Wishnatsky’s speech that precludes the Clinic from being able to ethically represent Wishnatsky does not change the allegation that the Clinic’s decision was based on professional ethics. It would be absurd to conclude that a decision based on ethical obligations loses its character because the actions creating the ethical dilemma constituted protected speech. In other words, the Clinic’s decision was not due to Wishnatsky’s speech, but the Clinic’s ethical obligations, Wishnatsky’s speech being relevant only to the extent it was his speech that created the ethical situation.

Wishnatsky was not denied representation because of his speech. He was denied representation because the Clinic lacked the resources to represent him, a reason completely unrelated to speech. Furthermore, even if a substantial or motivating factor in the Clinic’s decision was the Clinic’s ethical obligations, the motivating factor in the Clinic’s decision was its ethical obligations, not Wishnatsky’s speech.

C. The Clinic's legitimate interests in complying with ethical obligations outweigh any speech interests at stake.

The Amended Complaint alleges Wishnatsky's request for representation was denied because the Clinic's ethical obligations prohibited the representation. Am. Compl. ¶ 5. Wishnatsky had taken "persistent and antagonistic actions" against the Clinic and the Clinic's faculty. *Id.* Assuming arguendo that Wishnatsky's persistent and antagonistic actions were protected speech, the Clinic's interests in complying with its ethical obligations outweigh the speech interests at stake.

The Umbehr Court applied a balancing test, stating the government prevailed if its "legitimate interests . . . , deferentially viewed, outweigh the free speech interests at stake." 518 U.S. at 685. The Clinic has a strong, legitimate interest in properly (*i.e.*, ethically) providing legal services. The allegation that protected speech created the ethical dilemma does not eliminate the Clinic's interest in and duty to comply with its ethical obligations. Nor does the allegation that Wishnatsky's persistent and antagonistic actions against the Clinic and the Clinic's faculty were public attacks, or attacks regarding a public issue, change the Clinic's legitimate interest in ethically providing legal services. It would be incongruous to conclude that ethical obligations must be ignored if the actions creating the ethical dilemma constitute protected speech.

The Clinic's interest in complying with its ethical obligations outweigh Wishnatsky's purported free speech interests. As licensed professionals, the Clinic's attorneys must comply with professional standards or risk disciplinary action, up to and including revocation of licensure. As an arm of an educational institution, the Clinic has a compelling interest in educating future lawyers by teaching professional ethics and by practicing professionally. The Clinic's compliance with professional ethics, of course, also serves the public, the legal profession, and the courts. In short, compliance with professional standards is a must for the Clinic to properly fulfill its primary purpose of

educating law students and its secondary purpose of providing quality legal services to individuals otherwise unable to afford or secure legal representation. The Clinic's legitimate interests in complying with its ethical obligations are sufficiently strong to outweigh any free speech interests at stake.<sup>3</sup>

Dismissal of the Amended Complaint is appropriate because, as a matter of law, (1) representation by the Clinic does not constitute a "valuable governmental benefit," (2) the Clinic's decision not to represent Wishnatsky was not motivated by Wishnatsky's speech, and (3) the Clinic's interest in complying with its ethical obligations override any free speech interests at stake.

## **II. The requested injunctive relief is inappropriate.**

It is the Clinic's position that the Amended Complaint fails to state a claim upon which relief can be granted. If this Court concludes otherwise, however, the Amended Complaint should still be dismissed because the requested injunctive relief is inappropriate as a matter of law.

The Amended Complaint requests that this Court declare that the Clinic "unconstitutionally limited Plaintiff's access to the services of the Clinical Education Program" and issue an injunction prohibiting "such conduct in the future." Am. Compl. ¶ 8. It is unclear whether Wishnatsky is requesting a broad injunction prohibiting the Clinic from unconstitutionally limiting anyone's access to the Clinic's services, or an injunction prohibiting the Clinic from denying Wishnatsky services in the future. Under either circumstance, the requested injunctive relief should be denied.

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<sup>3</sup> The Supreme Court applies a "reasonably appropriate requirement" analysis in political affiliation cases. See O'Hare Truck Serv., Inc. v. City of Northlake, 518 U.S. 712, 714 (1996). That analysis recognizes there are certain government positions where political affiliation is an appropriate requirement of the job. Id. It is beyond cavil that it is reasonably appropriate for the Clinic to require that its legal representation not

A. General injunctions are prohibited.

Rule 65(d), Fed. R. Civ. P. requires that “[e]very order granting an injunction . . . shall be specific in terms; [and] shall describe in reasonable detail . . . the act or acts sought to be restrained.” It also provides that the injunction “is binding only upon the parties to the action . . . .” Id.

The requested injunction does not meet the requirements of Rule 65(d). It is not specific in terms, applying to “such conduct in the future.” This proposed injunction would not give the Clinic “fair and precisely drawn notice of what the injunction actually prohibits.” Calvin Klein Cosmetics Corp. v. Parfums de Coeur, Ltd., 824 F.2d 665, 669 (8<sup>th</sup> Cir. 1987). Because the proposed injunction is too vague to be understood, the Clinic would be required “to guess at what kind of conduct” would be prohibited. Id.

If the requested injunction is intended to be a broad injunction prohibiting the Clinic from unconstitutionally limiting anyone’s access to the Clinic’s services, it would also violate the requirement that the injunction be “binding only upon the parties to the action.” Fed. R. Civ. P. 65(d). As stated by the Eighth Circuit Court of Appeals, “[a]n injunction must be tailored to remedy specific harm shown.” Rogers v. Scurr, 676 F.2d 1211, 1214 (8<sup>th</sup> Cir. 1982). To issue an injunction, “[t]he court must determine that a cognizable danger of future violation exists and that danger must be more than a mere possibility.” Id. Furthermore, “[a] provision that essentially requires a party to obey the law ‘may be struck from an order for injunctive relief.’” Fielder v. Credit Acceptance Corp., 188 F.3d 1031, 1034 n.1 (8<sup>th</sup> Cir. 1999) (quoting Calvin Klein Cosmetics, 824 F.2d at 669).

The vague and general proposed injunction violates Rule 65(d). For this reason, the requested injunctive relief must be denied.

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violate the Clinic’s ethical obligations. The Clinic may and must provide its legal services, including deciding who to represent, subject to its ethical obligations.

B. Forced representation is inappropriate.

The requested injunction should also be denied if it is intended to only prohibit the Clinic from denying Wishnatsky legal services in the future. Although what amounts to specific performance by an attorney has been required, such cases are extremely rare. "They fall into two general classifications, that is, situations where the client's rights would be prejudiced by the delay consequent on replacing counsel and cases where the trial calendar of the Court will be dislocated, so as to impede the interest of justice." Goldsmith v. Pyramid v. Communications, Inc., 362 F.Supp. 694, 696 (S.D.N.Y. 1973); see also Fisher v. State, 248 So.2d 479, 486 (Fla. 1971) ("Approval by the court should be rarely withheld and then only upon a determination that to grant said request would interfere with the efficient and proper functioning of the court."). This case falls under neither of those categories. The Clinic has not undertaken to represent Wishnatsky. The Clinic is not attempting to withdraw from representation; rather, Wishnatsky is requesting that this Court mandate that the Clinic represent him, despite the professional judgment of the Clinic's director that the Clinic lacks the resources to do so and that such representation would violate the Clinic's professional ethics. The requested relief is inappropriate under these circumstances.

1. The requested relief would adversely impact the Clinic's other clients.

As noted above, attorneys have been compelled to continue representation of a current client when the client's rights would be prejudiced by the attorney's withdrawal or permitting counsel to withdraw would interfere with the efficient and proper functioning of the court. Not compelling the Clinic to represent Wishnatsky will not prejudice Wishnatsky's rights, because the Clinic never undertook to represent him. It may, however, prejudice the rights of the Clinic's current clients. The Clinic's program consists of two faculty and fifteen students. Requiring the Clinic to take on another case when it

does not have the available resources will likely adversely impact the Clinic's ability to represent its current clients. Not only could the rights of the Clinic's clients be adversely impacted, the Clinic's inability to dedicate the appropriate resources to its current cases could interfere with the efficient and proper functioning of the court in those cases. The Court should not commandeer the resources of the Clinic by ordering it to represent Wishnatsky.

2. An attorney should not be compelled to violate her professional standards.

This Court should not compel an attorney to represent a client when the attorney believes that representation would violate the attorney's ethical obligations. Cf. United States v. Oberoi, 331 F.3d 44, 47-48 (2d Cir. 2003) (finding it would "be an abuse of discretion not to grant the motion to withdraw" "if forcing an attorney to continue representation will cause a violation of the Code of Professional Responsibility"); Chaleff v. Superior Court, 138 Cal. Rptr. 735, 724 (Cal. Ct. App. 1977) (stating that "while the attorney's duty is to his client, he cannot be placed in the position where discharging that duty impinges upon his ethical responsibility as a member of the bar"). In the present case, the conflict of interest exists not only because of Wishnatsky's personal attacks against Professor Rovner and the Clinic prior to the Clinic's decision not to represent him. Wishnatsky's actions since that decision have further destroyed any possibility of a productive attorney-client relationship. After the Clinic's decision not to represent him, Wishnatsky made personal and attacking statements against Professor Rovner and the Clinic. For example, Wishnatsky wrote:

The only conclusion a reasoning mind can reach is that Rovner has hijacked the resources of the UND Law School to further the agenda of the ACLU, sparing them the expense and placing it upon the taxpayers of North Dakota. Her program at the law school is available to attack representations of Christian morality, but is too pressed for time to take on similar symbols of pagan origin.

.....

I find it hard to believe that the controversy over Rovner's representation of the NDSU professors has so affected her "mental condition" that she is compelled as a matter of professional ethics to decline representation in a parallel case. If her sensibilities are so delicate, perhaps she is not qualified for the rough-and-tumble of the litigation world and should resign her position as clinical education director in favor of someone with greater mental resiliency.

She certainly suffers no disqualifying mental anguish when attacking the sensibilities of Christians. Perhaps it's only when they in turn request a free lawyer at state expense that she experiences disabling mental distress.

It is time to end this sham and have the State Board of Higher Education request the ACLU to fund its own litigation in this state.

Attach. 2. These types of attacks clearly prevent an attorney from having a productive, trusting attorney-client relationship with the author of the statements.

In addition to his statements, Wishantsky commenced litigation against the Clinic and Professor Rovner personally. A lawsuit against an attorney necessarily destroys any possibility of a respectful, trusting, and open attorney-client relationship. Cf. In re Anonymous Member of the Bar, 379 S.E.2d 723, 723 (S.C. 1989) ("When a grievance has been filed, the relationship between the attorney and client will have usually deteriorated to such a point that the attorney will find it necessary to withdraw from further representation.").

An attorney should not be compelled to represent a current client, much less a client the attorney has not previously undertaken to represent, under these circumstances. "Shotgun weddings and enforced lawyer-client relationships fall in the same category." Fisher, 248 So.2d at 484. The requested injunctive relief is inappropriate.

### **III. The Clinic is entitled to summary judgment.**

It is the Clinic's position that the Amended Complaint fails to state a claim upon which relief can be granted. If this Court concludes otherwise, however, this Court should



consider the attachments to this brief and treat this motion as a motion for summary judgment. See Fed. R. Civ. P. 12(c).

A. This case is appropriate for summary judgment.

Under the standards applied by the United States Supreme Court and the Eighth Circuit, this case is appropriate for summary judgment.

Summary judgment is appropriate if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

In Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Supreme Court clarified that summary judgment procedure should be considered “as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” 477 U.S. at 327. The Court explained the proper construction of summary judgment included both “the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate . . . that the claims and defenses have no factual basis.” Id. However, the “rule authorizing summary judgment would serve no useful purpose if frivolous proofs were held to create a triable issue. The question on a motion for summary judgment is whether there is anything of substance to be tried.” 73 Am. Jur. 2d Summary Judgment § 27 (1974).

The Eighth Circuit has recognized the usefulness of summary judgment procedure in avoiding useless and time-consuming trials. Vacca v. Viacom Broad. of Mo., Inc., 875 F.2d 1337, 1339 (8th Cir. 1989); see also Olson v. Pennzoil Co., 943 F.2d 881, 883 (8th Cir. 1991). In so doing, it has relied upon the well-established standards

for deciding summary judgment questions. First, “[s]ummary judgment ‘should not be granted unless the moving party has established the right to a judgment with such clarity as to leave no room for controversy.’” Viacom Broad., 875 F.2d at 1339 (citation omitted). Second, “‘the evidence is viewed in the light most favorable to the nonmoving party,’ and the nonmoving party enjoys ‘the benefit of all reasonable inferences to be drawn from the facts.’” Id. (citation omitted). Finally, “‘the mere existence of some alleged factual dispute will not defeat an otherwise properly supported motion for summary judgment’ if there is ‘no genuine issue of material fact.’” Id. (citation omitted). The Supreme Court has held that a fact is material only where it “might affect the outcome of the suit under the governing law. . . . Factual disputes that are irrelevant or unnecessary will not be counted. . . . [I]t is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The Eighth Circuit has identified the burden in summary judgment: “When the moving party produces credible evidence that establishes there is no genuine issue of material facts, the opposing party must produce specific facts demonstrating a genuine issue for trial.” Westchem Agric. Chems., Inc. v. Ford Motor Co., 990 F.2d 426, 429 (8th Cir. 1993) (citing Elbe v. Yankton Indep. Sch. Dist. No. 1, 714 F.2d 848, 850 (8th Cir. 1983)). Under Rule 56, the disputed fact must be “material.”

In this case, there are no material facts in dispute as to the events upon which Wishnatsky bases his Amended Complaint. For that reason and the reasons given below, Defendant is entitled to judgment as a matter of law, and summary judgment should be entered dismissing the Amended Complaint with prejudice.

- B. Wishnatsky's request for representation would have been denied regardless of his speech.

Under the "unconstitutional conditions" doctrine, no liability exists if the same action would have been taken in the absence of the protected conduct. Umbehr, 518 U.S. at 675. The Clinic's ethical obligations were a secondary, not primary, reason for deciding not to represent Wishnatsky. Irrespective of Wishnatsky's persistent and antagonistic actions against the Clinic and its staff, which created the ethical concerns, the Clinic would have declined representation. Accordingly, no liability exists and the Clinic is entitled to summary judgment.

1. The request would have been denied because the Civil Rights Project did not have the resources to take on another lawsuit.

As previously noted, although paragraph 5 of the Amended Complaint references the Clinic's November 12, 2003, letter, the Amended Complaint ignores the first and primary reason given in the letter for not accepting Wishnatsky's request for representation. The letter states: "[D]ue to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time." Affidavit of Laura L. Rovner at ¶ 17, Ex. 11.

The Clinic operates two projects: the Civil Rights Project and the Civil Litigation Project. The Civil Litigation Project handles civil cases involving housing, employment, consumer rights and family law matters, among others. The Civil Rights Project provides a variety of legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties. Professor Rovner directs the Civil Rights Project. Professor Margaret Moore Jackson (Professor Jackson) directs the Civil Litigation Project. Rovner Aff. ¶¶ 3, 4, Exs. 1, 2, 3; Affidavit of Margaret Moore Jackson ¶¶ 1, 2. The case Wishnatsky was interested in pursuing fell within the realm of the Civil Rights Project.

Given the pedagogical focus of the Clinic's primary mission, and the very small size of the Clinic's program (two faculty and fifteen students), the Clinic is only able to represent a small number of the people who ask the Clinic for assistance. The Clinic's docket typically consists of about 10-15 cases, which the students generally work on in pairs. Rovner Aff. ¶ 6.

One of the several factors taken into account in deciding whether the Clinic should accept a case is whether the Clinic has the resources to accept a new case. Rovner Aff. ¶ 7. Professor Rovner and Professor Jackson discussed this factor when considering Wishnatsky's request for representation. They both concluded the Clinic did not currently have the resources to handle Wishnatsky's case. As explained by Professor Rovner:

I determined the Civil Rights Project did not have the resources to take on another lawsuit at the time Mr. Wishnatsky sent his letter to me. Indeed, between October 2003 and January 2004, the Civil Rights Project did not accept any new cases, and was required to turn down six other requests for representation. The Civil Rights Project was able to settle a case on behalf of two clients toward the end of December 2003, which enabled the project to accept a new case in January 2004.

Rovner Aff. ¶ 16.

Professor Jackson explained that there was never a question that the Clinic lacked the resources to handle Wishnatsky's request for representation:

There was never any question about whether to take Mr. Wishnatsky's case because Professor Rovner was not able to take any more cases at the time the letter came in. As a civil rights case, the case fell within the area of the Civil Rights Project. The Civil Litigation Project, however, also was not taking any new cases at that time. Professor Rovner and I had each turned away a number of persons who sought legal assistance that semester because the students were already busy enough.

Jackson Aff. ¶ 5.

The Clinic's caseload and lack of resources precluded the Clinic from representing Wishnatsky. Because the Clinic would have declined Wishnatsky's request for representation irrespective of his statements regarding the Clinic and its faculty, the Clinic is entitled to judgment in this matter.

2. The request would have been denied for pedagogical reasons.

The primary purpose of the Clinic is the education of law students. Rovner Aff. ¶ 5, Ex. 1. For this reason, a significant factor taken into account in deciding whether the Clinic should accept a case is whether, in the professional judgment of the Clinic faculty, the case will provide a good educational experience for the students. Rovner Aff. ¶ 7. Even if the Clinic had adequate resources to take an additional case at the time of Wishnatsky's request, Wishantsky's request for representation would have been denied for pedagogical reasons.

The Clinic was already handling an Establishment Clause case involving a challenge to a religious monument. Because of this, and the nature of Wishantsky's proposed claim, there would not be much educational benefit to the students in the Civil Rights Project by the Clinic accepting Wishnatsky's proposed case. Rovner Aff. ¶ 16; Jackson Aff. ¶ 8. To the extent the general legal issues overlap, students would not receive additional experience and training. Students would also receive very minimal benefit in researching the issues unique to Wishantsky's proposed case. Case law regarding the goddess Themis is sparse.<sup>4</sup> Students would obtain limited benefit by reading one footnote and doing factual research regarding the origins of the goddess Themis. On the other hand, cases involving issues like the Ten Commandments provide students a much better learning experience, permitting them to analyze, compare, and distinguish the dozens of federal and state cases addressing the Ten Commandments issue.<sup>5</sup>

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<sup>4</sup> The only reported decision addressing the constitutionality of a statue of the goddess Themis the undersigned counsel has been able to locate is Glassroth v. Moore, 335 F.3d 1282, 1300 n.4 (11<sup>th</sup> Cir. 2003), cert. denied, 124 S.Ct. 497 (2003).

<sup>5</sup> A number of courts have found Ten Commandments displays constitutional. See, e.g., Freethought Soc'y v. Chester County, 334 F.3d 247 (3<sup>rd</sup> Cir. 2003); Christian v. City of Grand Junction, No. 01-CV-685, 2001 WL 34047958 (D. Colo. June 27, 2001);

The Clinic would have declined Wishnatsky's request for representation because the case did not meet the pedagogical needs of the Clinic and because Wishnatsky did not fit the Clinic's criteria for representation. Accordingly, the Clinic is entitled to judgment because Wishnatsky's request for representation would have been denied irrespective of his alleged protected speech.

C. The Clinic's legitimate interests in complying with ethical obligations outweigh any speech interests at stake.

As previously discussed, the Umbehr Court applied a balancing test, asking whether the government's "legitimate interests . . . , deferentially viewed, outweigh the free speech interests at stake." 518 U.S. at 685. It is the Clinic's position that the Clinic's interests in complying with its ethical obligations, as a matter of law, outweigh Wishnatsky's purported free speech interests. If the Clinic's interest in complying with its ethical obligations does not, as a matter of law, outweigh the free speech interests at stake, the specific facts in this case demonstrate the Clinic's legitimate countervailing interests in declining the requested representation are sufficiently strong to justify the Clinic's decision.

1. The Clinic has a legitimate, overriding interest in avoiding conflicts of interest and protecting the attorney-client relationship.

a. Facts creating conflict of interest.

Several days after three students and Professor Rovner appeared at a Fargo City Council meeting to request, on behalf of their clients, that the City move its Ten Commandments monument from government property, Professor Rovner received a telephone call from Wishnatsky. In the call, Wishnatsky demanded to know how Legal Assistance of North Dakota (LAND) could be bringing a suit like this, given the restrictions on the types of cases LAND could accept. Professor Rovner explained to Wishnatsky that this case was not being handled by LAND, and that not a single LAND

dollar was being used in the representation. Wishnatsky then asked Professor Rovner whether she planned to represent “the baby butcherers” next. Professor Rovner found Wishnatsky’s tone and the nature of his questions to be hostile and aggressive. Rovner Aff. ¶ 10.

Several days after Wishnatsky’s phone call, Professor Rovner saw that Wishnatsky had written a letter to the Grand Forks Herald criticizing the Clinic’s clients, the Clinic and Professor Rovner personally for their involvement in the Ten Commandments matter. Despite the fact that Professor Rovner had explicitly told Wishnatsky in their telephone conversation that LAND was not in any way involved with the representation of those clients, Wishnatsky nonetheless represented in his letter to the Grand Forks Herald that Professor Rovner, as the director of LAND, appeared at the Fargo City Commission. Wishnatsky then accused the Clinic and Professor Rovner of “engaging in ideological warfare,” and referred to the Clinic’s clients as “parlor atheists who delight in attacking the faith of millions” and “militant atheists.” Rovner Aff. ¶ 11, Ex. 4.

Nearly one year later, Wishnatsky sent Professor Rovner a letter, dated October 29, 2003, requesting that the Clinic represent Wishnatsky in a lawsuit he wished to bring against “Grand Forks County and other relevant parties” for “having a statue of the goddess Themis on top of the Grand Forks County courthouse.” Wishnatsky sent that letter not only to Professor Rovner, but also to various media entities around the state. Those reporters received the letter before Professor Rovner did; indeed, Professor Rovner had telephone calls from several reporters asking whether the Clinic was going to represent Wishnatsky before Professor Rovner had even received Wishnatsky’s letter. Rovner Aff. ¶ 13, Exs. 6, 7, 8.

Based upon the above facts and the phrasing of the letter, Professor Rovner believed Wishnatsky was not seriously seeking the Clinic's representation in this suit. Rather, Professor Rovner believed Wishnatsky was using the request as another way to harass the Clinic and Professor Rovner. Rovner Aff. ¶ 14; see also Jackson Aff. ¶ 10.

Professor Rovner's belief that Wishnatsky's request was not serious, but rather the precursor to an attempt to further intimidate and harass the program, the Clinic's existing clients, and Professor Rovner personally, was confirmed when Professor Rovner read Wishnatsky's "Viewpoint" article in the Grand Forks Herald on November 5, 2003, which Wishnatsky sent to the Grand Forks Herald prior to receiving a response from the Clinic regarding the request for representation. In his article, Wishnatsky made the following statements, none of which seemed to Professor Rovner to be the sort of thing a prospective client who genuinely sought representation from the Clinic (and from Professor Rovner personally) would print in a newspaper article:

- "So we have the unseemly picture of a UND Law School associate professor, Laura Rovner, directing the program that is representing five other current or former state university professors – and all at taxpayer expense."
- "The suspicion therefore arises that Rovner is abusing her position as head of the Clinical Education Program at UND to further her own political agenda. The ungodliness of Bill Clinton is well known. Less well-known is that Rovner signed a petition sent to Congress by law school professors arguing against Clinton's impeachment by the U.S. House of Representatives."
- "For the state government via its law school to call the Ten Commandments lawsuit 'education' seems far from the mark. As the Herald stated in an editorial, it smacks of 'indoctrination,' especially in light of Rovner's statement applauding the 'courage' of these atheistic professors in asserting their 'religious freedom.'"

Rovner Aff. ¶ 15, Ex. 10.

Despite her firm belief that Wishnatsky's request was not a serious one and, further, that Wishnatsky's real purpose was harassment, Professor Rovner discussed the



request with Professor Jackson. Professor Jackson and Professor Rovner analyzed the factors they always consider in deciding whether to represent a client. There were many reasons why Professor Rovner and Professor Jackson determined the Clinic could not represent Wishnatsky, one being the Clinic's ethical obligations.

In reviewing the statements made by Wishnatsky to Professor Rovner and the press, both before and just after he made his request for representation, Professor Jackson and Professor Rovner determined that the Clinic and Professor Rovner had a conflict of interest with Wishnatsky for two reasons: first, because of the negative statements Wishnatsky had made about Professor Rovner personally (as well as the Clinic); and second, because of the negative statements Wishnatsky made to the media about the Clinic's existing clients in the *Twombly* case. Given these statements, Professor Rovner determined that the Clinic would be unable to establish an effective attorney-client relationship with Wishnatsky. Rovner Aff. ¶ 16; Jackson Aff. ¶¶ 5-9.

b. Obligation to avoid conflicts of interest.

Professor Rovner, like all attorneys licensed in North Dakota, must comply with the North Dakota Rules of Professional Conduct. North Dakota Rule of Professional Conduct 1.7 provides, in part:

- (a) A lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.
- (b) A lawyer shall not represent a client when the lawyer's own interests are likely to adversely affect the representation.

The comment to Rule 1.7 emphasizes the importance of avoiding personal conflicts to protect the attorney-client relationship. "Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined." Rule 1.7, comment. Under Rule 1.7 an impermissible conflict can exist because of a lawyer's

own interests or responsibilities to another client. If “the lawyer’s own interests or the lawyer’s responsibilities to another client” create a conflict, “the lawyer is absolutely prohibited from undertaking or continuing representation of the client.” Id.

With regard to personal conflicts, “[a] lawyer is required to decline representation of a client if the lawyer’s own . . . personal interests are likely to affect adversely the advice to be given or services to be rendered to the prospective client.” Id. “[A] lawyer’s personal interests cannot be allowed to affect the representation.” Id. A personal conflict with a potential client because of the potential client’s personal and public attacks on the attorney would, of course, qualify as a conflict likely to adversely affect the attorney-client relationship.

“Mutual disrespect, disregard, and distrust are not the foundation of an effective attorney-client relationship.” Wolgin v. Smith, NO. CIV. A. 97-7471, 1996 WL 482943, at \*4 (E.D. Pa. Aug. 21, 1996). As one court noted:

The relationship of attorney and client is one involving great personal and professional integrity and responsibility on the part of the lawyer and an equal confidence and trust on the part of the client. . . . Such relationship requires absolute confidence in the lawyer by the client and an equal confidence in the client by his lawyer.

Fisher v. State, 248 So.2d 479, 484 (Fla. 1971).

An attorney cannot represent a client in circumstances void of the mutual trust and confidence that are critical to the attorney-client relationship. Such an estranged relationship is inconsistent with the notion of the attorney-client relationship.

Rule 1.16(a)(1), N.D.R. Prof. Conduct, prohibits a lawyer from representing a client if “[t]he lawyer reasonably believes that the representation will result in violation of the rules of professional conduct or other law.” The comment to Rule 1.16 states “[a] lawyer should not accept representation in a matter unless it can be performed . . . without improper conflict of interest and to completion.”

In this case, an attorney-client relationship did not already exist. The Clinic had no obligation to represent Wishnatsky. A known personal conflict, which would prevent a trusting attorney-client relationship, precluded the Clinic from agreeing to represent Wishnatsky. It was ethically appropriate, even required, for the Clinic to decline to represent Wishnatsky. In fact, on numerous occasions courts have authorized attorneys to withdraw from representation because of personal conflicts with a client. See, e.g., Augustson v. Linea Aerea Nacional-Chile S.A., 76 F.3d 658, 663 (5<sup>th</sup> Cir. 1996) (noting courts have found just cause for an attorney to withdraw if the client degrades or humiliates the attorney); Sobol v. District Court, 619 P.2d 765, 767 (Colo. 1980) (withdrawal permitted because of mutual antagonism between lawyer and client which rendered it unreasonably difficult for lawyers to carryout their employment effectively); Ashker v. International Bus. Mach. Corp., 607 N.Y.S.2d 488 (N.Y. App. Div. 1994) (client's threats, accusations and refusal to accept advice rendered it unreasonably difficult for counsel to carryout legal representation); McGuire v. Wilson, 735 F. Supp. 83 (S.D.N.Y. 1990) (counsel allowed to withdraw due to deterioration in relationship); Kolomick v. Kolomick, 518 N.Y.S.2d 413, 414 (N.Y. App. Div. 1987) (permitting counsel to withdraw when plaintiff's papers indicated unproductive relationship); Wolgin, 1996 WL 482943, at \*4 (permitting attorney to withdraw because the client attacked the attorney's character and professional ethics). It is beyond cavil that an attorney can, and ethically must, decline representation if the attorney knows a personal conflict would cause an antagonistic relationship between lawyer and client and prevent the attorney from effectively and appropriately carrying out the legal representation. That is all that occurred here.<sup>8</sup>

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<sup>8</sup> Interestingly, in the employment context, the Court stated: "When close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer's judgment is appropriate." Connick v. Myers, 461 U.S. 138, 151-52

The Clinic did not decline to represent Wishnatsky because he engaged in protected expression; the Clinic declined to represent Wishnatsky because it was ethically inappropriate to do so. N.D.R. Prof. Conduct 1.7(a), (b); 1.16(a)(1). The Clinic is not required to ignore its ethical obligations simply because the actions which created the ethical dilemma may constitute protected speech. Providing legal services in a professional and ethical manner, particularly avoiding conflicts of interest and protecting the integrity of the attorney-client relationship, is a legitimate and significant interest. The Clinic's significant interest in providing ethical representation outweighs the free speech interests at stake. The Clinic is entitled to summary judgment.

2. The Clinic has a legitimate, overriding interest in protecting academic freedom and professional judgment.

Issues involving law school clinic lawyers also involve the issue of academic freedom. The constitutional importance of academic freedom has long been recognized. Grutter v. Bollinger, 123 S.Ct. 2325, 2339 (2003). It is a clinic lawyer's duty and responsibility to determine which cases to accept based upon the students, including their abilities and interests, the clinic's resources, pedagogical objectives, etc. Because the purpose of the clinic is to educate law students, not provide representation to the public, this is a significant and overriding interest. "An initial ethics consideration in law clinic case and client selection is the independence of the law clinic supervising attorney to choose cases and clients that meet the clinic's educational and public service goals. Scarce clinical program resources and pedagogical objectives require some limits on who may be represented or what cases may be handled." Kuehn & Joy, An Ethics Critique of

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(1983). Employers need not "tolerate action which [they] reasonably believed would disrupt the office, undermine [their] authority, and destroy close working relationships." Id. at 154. These principles would appear equally applicable to the attorney-client relationship.

. . . . .  
Interference in Law School Clinics, 71 Fordham L. Rev. 1971, 1975 (2003). By being able to choose clients and cases, law school clinics are able to better educate law students, their primary function, and able to be better advocates and provide better legal services. Id. at 1992, 1992 n.98.

Of course, one significant aspect of clinical education is teaching ethics. As noted in the Clinic Manual:

The Clinic operates as a law office in which each student is expected to assume the professional duties and responsibilities of a practicing attorney under the direct supervision of Clinic faculty. Students are expected to know and observe the requirements of the Rules of Professional Conduct in their clinic practice. Students are also expected to assume the initiative and take responsibility for the progress and successful completion of cases assigned to them.

Ex. 1 at p. 1. The importance of the Rules of Professional Conduct is noted and addressed later in the Clinic Manual: "The opportunity to represent real clients carries with it certain professional responsibilities. All Clinic members are expected to review and scrupulously follow the requirements of the Rules of Professional Conduct." Ex. 1 at p. 5. The Clinic Manual then specifically addresses conflicts of interest. Ex. 1 at p. 5-6. And, stressing again the importance of the Rules of Professional Conduct, page 6 of the Clinic Manual states: "It is impossible to place too much emphasis on the Rules of Professional Conduct. Problems of professional responsibility appear in the simplest of situations without warning." Ex. 1 at p. 6.

The Clinic faculty members are role models to the law students. The Clinic cannot effectively teach the Rules of Professional Conduct unless its faculty know and are permitted to scrupulously follow them.

Permitting clinic attorneys to use professional judgment in addressing ethical dilemmas is both a part of academic freedom and professional responsibility. The Clinic's legitimate interest, as an educator of law students, in educating students and protecting its

faculty's ability to exercise professional judgment and academic freedom, outweigh the free speech interests at stake. For this reason, summary judgment is appropriate.


### CONCLUSION

FOR THE ABOVE REASONS, defendant respectfully requests that this Court dismiss the Amended Complaint with prejudice.

Dated this 29<sup>th</sup> day of April, 2004.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: \_\_\_\_\_

  
Douglas A. Bahr  
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Facsimile (701) 328-4300

Attorneys for Defendant.

November 12, 2003

Martin Wishnatsky  
P.O. Box 413  
Fargo, North Dakota 58107

SCHOOL OF LAW  
CLINICAL EDUCATION PROGRAM  
Civil Litigation Project  
Civil Rights Project  
P.O. BOX 9003  
GRAND FORKS, NORTH DAKOTA 58202-9003  
(701) 777-2932  
FAX (701) 777-6301

Dear Mr. Wishnatsky:

Thank you for your October 29, 2003 inquiry regarding legal representation. Determination of eligibility for legal assistance is made by the Clinical Education Program based upon internal guidelines established by the Program, which take into account our resources, our current caseload and an applicant's ability to secure legal representation elsewhere. In the normal course of assessing applications for representation, the Clinic first requires prospective clients to demonstrate that they meet the Clinic's eligibility criteria for representation, that is, that they have been unable to secure legal assistance elsewhere. We have not asked you to provide such information because, due to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time.

Moreover, even if the lack of resources did not preclude the Clinic from representing you, our ethical obligations under the North Dakota Rules of Professional Conduct would prohibit us from doing so. Our independent, professional judgment is that your persistent and antagonistic actions against the Clinical Education Program and faculty involved would adversely affect our ability to establish an effective client-attorney relationship with you and would consequently impair our ability to provide legal representation to you. Therefore, issues of resources notwithstanding, our ethical obligations require us to decline your request for representation.

We wish you success in finding a resolution to your concerns.

Very truly yours,



The Clinical Education Program  
by Laura L. Rovner, Director

ATTACHMENT

12/2/03 - G.F. HERND VIEWPOINT

# Clinic's refusal to take Themis case shows a double standard

By Martin Wishnatsky

FARGO — I have received a letter from Laura Rovner, director of the Clinical Education Program at UND Law School, declining to represent me in challenging the Themis statue on the Grand Forks County Courthouse ("Goddess gotcha," Page 1A, Oct. 31).

The primary reason is that "due to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time."

If resources are so tight, where was the urgency to take a case in Fargo over a monument which had rested undisturbed on the City Hall lawn for 40 years without prompting any litigation? Jon Lindgren, one of the plaintiffs in that case, walked past the monument on a daily basis for the 16 years he was mayor (1978-1994) without ever being sufficiently distressed to bring suit. Is it not curious that the UND Law School's involvement in the matter parallels an American Civil Liberties Union campaign against Ten Commandments monuments nationwide?

The matter becomes even more curious when Rovner further explains that representation

by the Civil Rights Project is limited to those who "have been unable to secure legal assistance elsewhere."

Until a year ago, Jon Lindgren was president and board member of the ACLU of the Dakotas. Is it credible that he was "unable to secure legal assistance" in furtherance of a primary objective of his own organization?

The only conclusion a reasoning mind can reach is that Rovner has hijacked the resources of the UND Law School to further the agenda of the ACLU, sparing them the expense and placing it upon the taxpayers of North Dakota. Her program at the law school is available to attack representations of Christian morality, but is too pressed for time to take on similar symbols of pagan origin.

Rovner further explains that even if there was time, she would decline the case because "our ethical obligations under the North Dakota Rules of Professional Conduct would prohibit us from doing so." What are these ethical obligations? Rovner contends that because I have criticized the program for representing the NDSU atheists ("your persistent and antagonistic actions"), she could not establish "an effective client-attorney relationship."

Rule 1.16 of the North Dakota

Rules of Professional Conduct states four circumstances under which an attorney "shall not represent a client." The only one that is remotely relevant to the current situation is: "(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

I find it hard to believe that the controversy over Rovner's representation of the NDSU professors has so affected her "mental condition" that she is compelled as a matter of professional ethics to decline representation in a parallel case. If her sensibilities are so delicate, perhaps she is not qualified for the rough-and-tumble of the litigation world and should resign her position as clinical education director in favor of someone with greater mental resiliency.

She certainly suffers no disqualifying mental anguish when attacking the sensibilities of Christians. Perhaps it's only when they in turn request a free lawyer at state expense that she experiences disabling mental distress.

It is time to end this sham and have the State Board of Higher Education request the ACLU to fund its own litigation in this state.

*Wishnatsky is a pro-life and Christian activist in Fargo.*

## MAILBAG

### Exercise your rights, and wind up on an FBI list

GRAND FORKS — When the handful of antiwar activists were gathering in Grand Forks to protest as President Bush was launching this major debacle in Iraq, we were reminded by his supporters that our troops are protecting the right of Americans to engage in such protests.

The Nov. 23 New York Times reports that the FBI has col-

lected extensive information on the antiwar movement and has ordered local law enforcement officials to report any suspicious activity related to war protests. I think we need more war protesters here and far fewer local National Guard members in Iraq.

As a former member of the National Guard, I don't accept the spin local media put on the de-

ployments there. Most National Guard members here sign up because they need the money or want to defer or pay off student debts.

Let's have the hard news about the war on the front page where it belongs. Maybe more people will realize what a stupid, immoral and wasteful war this is.

*Richard Shafer*

bubbling around years ago in Michael's Church for its sixth party. ... The \$1,826 in proceeds from the bazaar, according to Torkelson, ... ity raised \$ Anchor Splash ... A surge in aid Santa Claus of its goal for

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IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law, in her  
individual and official capacity,

Defendant.

**STATEMENT OF UNDISPUTED  
MATERIAL FACTS**

**Civil Case No. A2-04-1**

.....

Laura Rovner is an Associate Professor of Law and the Director of the Clinical Education Program (the Clinic) at the University of North Dakota School of Law. Affidavit of Laura L. Rovner at ¶ 1.

The Clinic operates two projects: the Civil Rights Project and the Civil Litigation Project. The Civil Litigation Project handles civil cases involving housing, employment, consumer rights and family law matters, among others. The Civil Rights Project provides a variety of legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties. Professor Rovner directs the Civil Rights Project. Professor Margaret Moore Jackson directs the Civil Litigation Project. Rovner Aff. at ¶¶ 3, 4, Exs. 1, 2, 3; Affidavit of Margaret Moore Jackson at ¶¶ 1, 2.

The primary purpose of the Clinic is the education of law students. A secondary purpose of the Clinic is to provide quality legal services to individuals who otherwise could not afford the services of an attorney and to individuals or groups who are unable to secure representation elsewhere because their cases may involve controversial issues or conflicts of interest for other lawyers. Rovner Aff. at ¶ 5, Ex. 1.

Given the pedagogical focus of the Clinic's primary mission, and the very small size of the Clinic's program, the Clinic is only able to represent a small number of the people who ask the Clinic for assistance. The Clinic does not maintain a waiting list. Rovner Aff. at ¶¶ 6, 8; Moore Jackson Aff. at ¶ 11.

Several factors are taken into account in deciding whether the Clinic should accept a case. Those factors include: (1) whether the Clinic has the resources to accept a new case at the time the application comes in; (2) whether the subject matter of the case fits within one of Clinic's two projects (the Civil Litigation Project and the Civil Rights Project); (3) whether, in the professional judgment of the clinic faculty, the case will provide a good educational experience for the students; and (4) whether the case creates a conflict of interest with clinical faculty, students or existing Clinic clients. Rovner Aff. at ¶¶ 7, 9.

Professor Rovner and three students appeared at a Fargo City Council meeting to request, on behalf of their clients, that the City move its Ten Commandments monument from government property. Several days later Professor Rovner received a telephone call from Martin Wishnatsky. In the call, Mr. Wishnatsky demanded to know how Legal Assistance of North Dakota (LAND) could be bringing a suit like this, given the restrictions on the types of cases LAND could accept. Professor Rovner explained to Mr. Wishnatsky that this case was not being handled by LAND, and that not a single LAND dollar was being used in the representation. Mr. Wishnatsky then asked Professor Rovner whether she planned to represent "the baby butchers" next. Professor Rovner found Mr. Wishnatsky's tone and the nature of his questions to be hostile and aggressive. Rovner Aff. at ¶ 10.

Several days after Mr. Wishnatsky's phone call, Professor Rovner saw that Mr. Wishnatsky had written a letter to the Grand Forks Herald. Rovner Aff. at ¶ 11. The

article is attached as Exhibit 4 and incorporated by reference herein.

Professor Rovner's position and the Civil Rights Project have never been funded in any way with LAND money. Rovner Aff. at ¶ 12, Ex. 5.

Mr. Wishnatsky sent Professor Rovner a letter, dated October 29, 2003, requesting that the Clinic represent Mr. Wishnatsky in a lawsuit he wished to bring against "Grand Forks County and other relevant parties" for "having a statue of the goddess Themis on top of the Grand Forks County courthouse." Mr. Wishnatsky sent that letter not only to Professor Rovner, but also to various media entities around the state. Those reporters received the letter before Professor Rovner did; indeed, Professor Rovner had telephone calls from several reporters asking whether the Clinic was going to represent Mr. Wishnatsky before Professor Rovner had even received Mr. Wishnatsky's letter. Rovner Aff. at ¶ 13, Exs. 6, 7, 8.

Professor Rovner believed Mr. Wishnatsky was not seriously seeking the Clinic's representation, but, rather, that Mr. Wishnatsky was using the request as another way to harass the Clinic and Professor Rovner. Rovner Aff. at ¶ 14; see also Moore Jackson Aff. at ¶¶ 10.

A "Viewpoint" article written by Mr. Wishnatsky was published in the November 5, 2003, edition of the Grand Forks Herald. Mr. Wishnatsky sent the article to the Grand Forks Herald prior to receiving a response from the Clinic regarding the request for representation. The article is attached as Exhibit 10 and incorporated by reference herein.

Despite her firm belief that Mr. Wishnatsky's request was not a serious one and, further, that Mr. Wishnatsky's real purpose was harassment, Professor Rovner discussed the request with Professor Moore Jackson. Professor Moore Jackson and Professor Rovner analyzed the factors they always consider in deciding whether to

represent a client. It was determined the Civil Rights Project could not represent Mr. Wishnatsky because:

- The Civil Rights Project did not have the resources to take on another lawsuit at the time Mr. Wishnatsky sent his request letter.
- Mr. Wishnatsky did not fit the Clinic's criteria for representation.
- The Clinic and Professor Rovner had a conflict of interest with Mr. Wishnatsky.
- The case would not provide a good educational experience for the students.
- The case had questionable merit.

Rovner Aff. at ¶ 16; Moore Jackson Aff. at ¶¶ 5-9.

On November 12, 2003, Professor Rovner sent Mr. Wishnatsky a letter notifying him that the Clinic was unable to accept his case. Rovner Aff. at ¶ 17, Ex. 11.

Professor Rovner does not feel she could have a healthy and productive attorney-client representation with Mr. Wishnatsky. In Professor Rovner's professional judgment, it would be a violation of the North Dakota Rules of Professional Conduct for her to represent Mr. Wishnatsky. Rovner Aff. at ¶ 18.

Dated this 28<sup>th</sup> day of April, 2004.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By: 

Douglas A. Bahr  
Solicitor General  
State Bar ID No. 04940  
Office of Attorney General  
500 North 9<sup>th</sup> Street  
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Telephone (701) 328-3640  
Facsimile (701) 328-4300

Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law, in her  
individual and official capacity,

Defendant.

**AFFIDAVIT OF LAURA L. ROVNER**

**Civil Case No. A2-04-1**

.....

Laura L. Rovner, being first duly sworn upon oath, deposes and states as follows:

1. I am an Associate Professor of Law and the Director of the Clinical Education Program at the University of North Dakota School of Law. I have been employed in that capacity since June 2002.
2. The original name of the clinical program at UND School of Law was the Legal Aid Association. In June 2003, the name of the program was changed to the Clinical Education Program to better reflect the educational mission of the program.
3. When I began employment at the UND School of Law, I established the Civil Rights Project. Through the Civil Rights Project, students participating in the Clinic have the opportunity to work on complex civil rights matters. One of the major goals of the Civil Rights Project is to provide students with a different—and complementary—educational experience to that which already existed through the Clinic's Civil Litigation Project. The Civil Litigation Project handles primarily family law cases, usually in state court. The Civil Rights Project was designed to provide students with the opportunity to learn how to represent clients on different types of claims

. . . . .  
(typically those involving violations of civil and constitutional rights) and to give them the opportunity to learn federal court practice. See Exhibits 1 at 1; 2 at 1-2; 3.

4. I direct the Civil Rights Project. Professor Margaret Moore Jackson directs the Civil Litigation Project. See Exhibit 2 at 1-2.

5. As a law school clinic, the Clinic's primary mission is the education of law students. A secondary goal is to provide representation to people who would otherwise not have access to legal assistance. See Exhibits 1 at 1, 2; 3.

6. Given the pedagogical focus of the Clinic's primary mission, and the very small size of the Clinic's program (two faculty and fifteen students), the Clinic is only able to represent a small number of the people who ask the Clinic for assistance, even though many more than that meet the Clinic's eligibility criteria, which includes whether an applicant is able to secure legal representation elsewhere. The Clinic's docket typically consists of about 10-15 cases, which the students generally work on in pairs.

7. Several factors are taken into account in deciding whether the Clinic should accept a case. Those factors include: (1) whether the Clinic has the resources to accept a new case at the time the application comes in; (2) whether the subject matter of the case fits within one of Clinic's two projects (the Civil Litigation Project and the Civil Rights Project); and (3) whether, in the professional judgment of the clinic faculty, the case will provide a good educational experience for the students.

8. The Clinic does not maintain a waiting list. Experience has shown that using a waiting list is not productive or conducive to the Clinic's educational mission.

9. Sometimes the faculty member who directs the Project (the Civil Litigation Project or the Civil Rights Project) to which the application for assistance is directed determines on her own whether to accept the case; at other times Professor Jackson and I discuss applications, particularly if we are trying to ascertain whether students in

. . . .

either or both Projects are in need of additional work or whether the students' cases are sufficiently active such that the students are unable to handle additional cases at the time of the application. Additionally, in deciding whether to accept a case, we may also discuss factors such as the current mix of cases in our docket as well as whether we believe, in our professional judgment, that an applicant's situation presents a viable legal claim. Of course, because the Clinic is also a law office in which both faculty and students are bound by the North Dakota Rules of Professional Conduct, we must—and do—ensure that any prospective clients do not have conflicts of interest with clinical faculty, students or existing Clinic clients. See Exhibit 1 at 5-6, 17, 18.

10. Several days after three students and I appeared at a Fargo City Council meeting to request, on behalf of our clients, that the City move its Ten Commandments monument from government property, I received a telephone call from Martin Wishnatsky. In the call, Mr. Wishnatsky demanded to know how LAND (Legal Assistance of North Dakota) could be bringing a suit like this, given the restrictions on the types of cases LAND could accept. I explained to him that this case was not being handled by LAND, and that not a single LAND dollar was being used in the representation. Mr. Wishnatsky then asked me whether I planned to represent “the baby butcherers” next. I found Mr. Wishnatsky's tone and the nature of his questions to be hostile and aggressive.

11. Several days after this phone call, I saw that Mr. Wishnatsky had written a letter to the Grand Forks Herald criticizing the Clinic's clients, the Clinic and me personally for our involvement in the Ten Commandments matter. Exhibit 4. Despite the fact that I had explicitly told him in our telephone conversation that LAND was not in any way involved with the representation of these clients, he nonetheless represented in his letter to the Grand Forks Herald that “when it comes to the poor, LAND has a long

. . . .

list of significant legal issues which it will not litigate . . . . All of these practical matters LAND is too busy to litigate, or uninterested in pursuing on behalf of the impoverished.” Exhibit 4. Mr. Wishnatsky then accused the Clinic and me of “engaging in ideological warfare,” and referred to our clients as “parlor atheists who delight in attacking the faith of millions.” Exhibit 4.

12. At the time we began our representation of the plaintiffs in the *Twombly v. City of Fargo* case, the Clinic had a subgrant from LAND to provide legal assistance to residents of Grand Forks County. Both my position and the Civil Rights Project have never been funded in any way with LAND money. Because Mr. Wishnatsky’s letter misrepresented LAND’s role in the case, I was asked by Linda Catalano, the Executive Director of LAND, to write a statement clarifying that LAND was not involved in the case. As requested, I wrote a letter clarifying that LAND money was not funding the Ten Commandments lawsuit. Exhibit 5.

13. Nearly one year later, Mr. Wishnatsky sent me a letter, dated October 29, 2003, requesting that the Clinic represent him in a lawsuit he wished to bring against “Grand Forks County and other relevant parties” for “having a statue of the goddess Themis on top of the Grand Forks County courthouse.” Exhibit 6. He sent that letter not only to me, but also to various media entities around the state. Those reporters received the letter before I did; indeed, I had telephone calls from several of them asking whether I was going to represent Mr. Wishnatsky before I had even received his letter. See Exhibits 7; 8. When I did receive Mr. Wishnatsky’s letter, I also noted that Mr. Wishnatsky had copied Representative Jim Kasper, the North Dakota state legislator who sought an attorney general’s opinion as to the legality of the Clinic representing clients in the *Twombly v. City of Fargo* case. Exhibits 6; 9.



. . . .

14. The facts in paragraphs 11 and 13, coupled with the phrasing of the letter (*i.e.*, that Mr. Wishnatsky was not seeking representation because he was unable to research and present the legal issues himself, but rather because he “do[es] not possess the expertise properly to research the pagan religious origins of the Themis statute and to present the facts demonstrating its roots in heathen worship,”), caused me to believe that Mr. Wishnatsky was not seriously seeking the Clinic’s representation in this suit, but, rather, that he was using the request as another way to harass the Clinic and me.

15. My belief that Mr. Wishnatsky’s request was not serious, but rather the precursor to an attempt to further intimidate and harass the program, the Clinic’s existing clients, and me personally, was confirmed when I read Mr. Wishnatsky’s “Viewpoint” article in the Grand Forks Herald on November 5, 2003, which he sent to the Grand Forks Herald prior to receiving a response from the Clinic regarding his request for representation. Exhibit 10. In his article, Mr. Wishnatsky made the following statements, none of which seemed to me to be the sort of thing a prospective client who genuinely sought representation from the Clinic (and from me personally) would print in a newspaper article:

- “So we have the unseemly picture of a UND Law School associate professor, Laura Rovner, directing the program that is representing five other current or former state university professors and all at taxpayer expense.”
- “The suspicion therefore arises that Rovner is abusing her position as head of the Clinical Education Program at UND to further her own political agenda. The ungodliness of Bill Clinton is well known. Less well-known is that Rovner signed a petition sent to Congress by law school professors arguing against Clinton’s impeachment by the U.S. House of Representatives.”
- “For the state government via its law school to call the Ten Commandments lawsuit ‘education’ seems far from the mark. As the Herald stated in an editorial, it smacks of ‘indoctrination,’ especially in light

of Rovner's statement applauding the 'courage' of these atheistic professors in asserting their 'religious freedom.'"

16. Despite my firm belief that Mr. Wishnatsky's request was not a serious one and, further, that his real purpose was harassment, I discussed the request with Professor Jackson. Professor Jackson and I analyzed the factors we always consider in deciding whether to represent a client, and determined the following:

- I determined the Civil Rights Project did not have the resources to take on another lawsuit at the time Mr. Wishnatsky sent his letter to me. Indeed, between October 2003 and January 2004, the Civil Rights Project did not accept any new cases, and was required to turn down six other requests for representation. The Civil Rights Project was able to settle a case on behalf of two clients toward the end of December 2003, which enabled the project to accept a new case in January 2004.
- In reviewing the statements made by Mr. Wishnatsky to the press, both before and just after he made his request for representation, Professor Jackson and I determined that the Clinic and I had a conflict of interest with Mr. Wishnatsky for two reasons: first, because of the negative statements Mr. Wishnatsky had made about me personally (as well as the Clinic); and second, because of the negative statements Mr. Wishnatsky made to the media about the Clinic's existing clients in the *Twombly* case. Given these statements, I determined that the Clinic would be unable to establish an effective attorney-client relationship with Mr. Wishnatsky.
- Because the Clinic was already handling an Establishment Clause case involving a challenge to a religious monument, I did not see much educational benefit to the students in accepting another case that raised very similar issues, particularly one that seemed unlikely to state a claim.
- For the reasons given above, I did not spend much time researching the merits of Mr. Wishnatsky's claim; however, I was aware of the Eleventh Circuit's decision in *Glassroth v. Moore*, in which the Eleventh Circuit specifically addressed the constitutionality of a Themis statue as it was raised as an argument by Justice Moore in his appeal of his case. The Eleventh Circuit summarily dismissed any argument that Themis was analogous to the Ten Commandments monument installed by Justice Moore, explaining: "Chief Justice Moore contends that under the district court's reasoning, the sculpture of 'Themis,' the Greek goddess of justice, which is part of the fountain in front of the courthouse where the trial in this case took place, would also be unconstitutional. His contention ignores the clear factual and contextual distinctions between that sculpture and the Ten Commandments monument. There is no evidence that the sculpture has had the effect of furthering religion, or that its purpose was to do so."

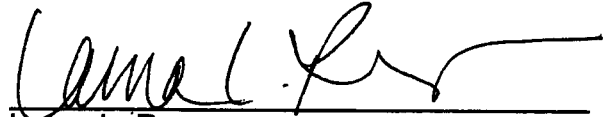
17. For the reasons articulated in paragraph 16, I determined the Civil Rights Project could not represent Mr. Wishnatsky. On November 12, 2003, I sent Mr. Wishnatsky a letter notifying him that the Clinic was unable to accept his case. Exhibit 11.

18. Based upon Mr. Wishnatsky's statements regarding the Clinic and me personally, as well as his lawsuit naming the Clinic and me personally, I do not feel I could have a healthy and productive attorney-client representation with Mr. Wishnatsky. In my professional judgment, it would be a violation of the North Dakota Rules of Professional Conduct for me to represent Mr. Wishnatsky.


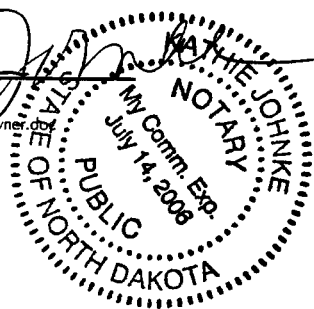
19. Attached as Exhibit 1 is a true and correct copy of the Clinic Manual of the University of North Dakota School of Law Clinical Education Program; as Exhibit 2 is a true and correct copy of a WebPage entitled Clinical Education Program (<http://www.law.und.nodak.edu/LegalAid/index.html>); as Exhibit 3 is a true and correct copy of the Clinical Education Homepage (<http://www.law.und.nodak.edu/lawweb/clinic/clinics.html>); as Exhibit 4 is a true and correct copy of Martin Wishnatsky, *MAILBAG: Legal Aid Association 'shall not' fight the 10 Commandments*, Grand Forks Herald, Nov. 4, 2002; as Exhibit 5 is a true and correct copy of a letter to the *Grand Forks Herald* editor from Laura L. Rovner; as Exhibit 6 is a true and correct copy of letter from Martin Wishnatsky to Laura Rovner (Oct. 29, 2003); as Exhibit 7 is a true and correct copy of Stephen J. Lee, *Goddess gotcha*, Grand Forks Herald, Oct. 31, 2003; as Exhibit 8 is a true and correct copy of Lisa Davis, *Law school to treat case like any other*, Grand Forks Herald, Nov. 1, 2003; as Exhibit 9 is a true and correct copy of Letter Opinion 2003-L-42; as Exhibit 10 is a true and correct copy of Martin Wishnatsky, *If the Fargo monument goes, Themis goes, too*, Grand Forks Herald, Nov. 5, 2003; as Exhibit 11 is a true and correct copy of a letter from Laura L. Rovner to Martin

Wishnatsky (Nov. 12, 2003); as Exhibit 12 is a true and correct copy of Martin Wishnatsky, *Clinic's refusal to take Themis case shows a double standard*, Grand Forks Herald, Dec. 2, 2003; and as Exhibit 13 is a true and correct copy of Stephen J. Lee, *Justice for all?*, Grand Forks Herald, Dec. 2, 2003.

Dated this 14<sup>th</sup> day of April, 2004.

  
Laura L. Rovner

Subscribed and sworn to before me  
this 14<sup>th</sup> day of April, 2004.

  
Notary Public  
e:\dixie\cl\bahr\risk management\wishnatsky\aff-rovner.doc  


**UNIVERSITY OF NORTH DAKOTA  
SCHOOL OF LAW  
CLINICAL EDUCATION PROGRAM**

**CLINIC MANUAL**

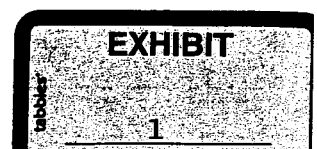
**I. INTRODUCTION**

The primary purpose of the Clinic is to provide you with opportunities to develop effective lawyering skills; to apply substantive coursework to actual cases; and to examine the institutional, ethical and personal issues inherent in the challenging role of today's practicing lawyers. A secondary purpose is to provide quality legal services to individuals who otherwise could not afford the services of an attorney and to individuals or groups who are unable to secure representation elsewhere because their cases may involve controversial issues or conflicts of interest for other lawyers.

The Clinic operates as a law office in which each student is expected to assume the professional duties and responsibilities of a practicing attorney under the direct supervision of Clinic faculty. Students are expected to know and observe the requirements of the Rules of Professional Conduct in their clinic practice. Students are also expected to assume the initiative and take responsibility for the progress and successful completion of cases assigned to them.

The Clinic operates two Projects: the Civil Litigation Project (CLP) and the Civil Rights Project (CRP). The CLP represents clients in courts and before administrative agencies in a wide variety of civil cases. The CLP docket includes matters involving housing, employment, consumer rights and family law cases, among others. An overriding objective of the CLP is to enable persons who cannot otherwise obtain legal assistance to effectively assert basic human rights, such as the right to adequate housing, protection of privacy, freedom from interference into family matters, reasonable working hours, equitable marriage dissolution proceedings, and protection of children. Due to the lack of available free or reduced-fee legal assistance, many low-income persons have difficulty obtaining divorces, resolving child custody disputes, or asserting their rights as tenants, employees, consumers, or medical patients.

The CRP provides a variety of legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties. One reason clients of the CRP are unable to find other lawyers is due to their lack of financial resources. In our community, as elsewhere, the vast majority of lawyers provide legal assistance only to those who can afford to pay for their services. And in recent years, federal funding, the major source of funding for legal services for people with low or no incomes, has been reduced dramatically, particularly for legal assistance in situations involving civil rights claims. A second reason CRP clients are unable to find lawyers elsewhere relates to the types of cases they may have, which often involve controversial issues or conflicts of interest for other lawyers. The CRP represents clients in federal and state courts and before administrative agencies in a broad range of civil and human rights matters, including disability, race, gender, religious, age, sexual orientation and national origin discrimination, sexual harassment, and constitutional law issues.



Clinic students may anticipate representing clients in one or both Projects over the course of the semester, and in doing so, will be exposed to a diverse and challenging caseload similar to a general practice firm. In the course of providing legal services to people who may not otherwise have access to such assistance, student attorneys develop the skills and values necessary for professionally effective and personally satisfying lawyering.

Students also engage in simulations, participate in weekly seminars and case review meetings, and complete several written assignments. These activities are the basis for the exploration of key lawyering issues, such as:

- *The centrality of fact development;*
- *The interplay of analytical, narrative, strategic and interpersonal factors;*
- *The importance of critique and collaboration;*
- *The impact of personal and professional values; and*
- *The complexities of coming to terms with the lawyer's role.*

#### A. Goals

Our overarching goal in this course is to assist you in your professional development as attorneys. We believe that a professionally effective and personally gratifying practice of law requires a breadth of perspective, a depth of insight, and a systematic approach to legal planning and decision-making. We will make every effort to provide opportunities for you to identify and develop practical wisdom and judgment, as well as more traditional litigation and alternative dispute resolution techniques.

Of equal, or perhaps greater, importance to this endeavor are your own goals and expectations for yourself. In recognition of this, we will ask you to identify your learning goals at the beginning of the semester. This will provide the clinic faculty with a basis for determining how to most effectively supervise you to make your Clinic experience as rewarding as possible.

#### B. Methodology

Accepting responsibility for one's own learning is a key underpinning of clinical teaching philosophy. Additionally, the practice of law imposes its own set of responsibilities that may differ from those you have assumed thus far in your legal education. Specifically, clients expect, and codes of professional responsibility require, that lawyers accept responsibility for the interests of others. Thus, in the clinic, you will have primary responsibility for client representation *and* for the quality of your educational experience.

An essential tool for evaluating your progress and success as a student attorney is the capacity for *self-critique*; that is, the ability to observe your own ways of working and to learn from your experiences. Moreover, observation and analysis of the actions of others—clients, witnesses, adversaries, decision-makers and other involved parties—can contribute to your understanding of lawyers' work. In the clinic, written and oral critique of the readings, casework, and simulations are integral to your learning experience.

To facilitate the development of your reflective skills, you will be responsible for the timely completion of five reflective writing assignments during the semester. The specific assignments will be of several different types. The first assignment involves the preparation of a **memorandum on your learning goals** for the semester, and the final assignment, due at the conclusion of the semester, requires the preparation of a **written self-evaluation** regarding your own sense of what you have learned and the quality of your performance in case and course work. In addition, you will also be asked to prepare a **midterm self-evaluation**.

There will also be one **guided writing assignment** on issues raised by the readings assigned for class discussion. The purpose of this assignment is to spur critical thinking about lawyering and to facilitate preparation for in-class discussions. Specific questions or issues to be addressed will be distributed ahead of time. This paper should be 3-4 double-spaced pages and will be due the day before the relevant classroom discussion.

In addition, there will be one **unguided writing assignment**, where you are encouraged to express your reflections on what you have been doing. The purpose of this assignment is to provide you with additional opportunities to clarify in writing your sense of your clients and your reactions to your lawyering experiences and to provide your supervising attorneys with additional information about how you are grappling with your lawyering responsibilities. These unguided reflections should not be only an account of what you have done or a listing of complaints. Nor should it be a substitute for the midterm or final self-evaluation. Rather, they are an opportunity to work through in writing what you find most interesting or troubling about a case or course issue, event, relationship, reading, etc. The ability to make explicit lessons learned from one's experiences is an important "practical" skill (just like interviewing or negotiating). It is the kind of skill that often separates exceptional attorneys from the rest of the bar. The unguided writing assignment should be no less than 3-4 double spaced pages. You are encouraged to fully develop your thoughts and not to hesitate to exceed the minimum page limit.

### C. Grading

All aspects of the course will be graded. The quality of assistance and representation provided clients in specific cases will account for 60% of your letter grade. You will not be graded on whether you won or lost but on how diligently and insightfully you prepared and performed. As in practice, the willingness to "go the extra mile" will be given great weight. The perceptiveness and thoughtfulness you express in the reflective writing assignments will account for another 20% of your grade. The final 20% of your grade will reflect your ability to be self-reflective and thoughtful in classroom discussions, supervisory sessions, case reviews and in other oral exchanges regarding simulation exercises and case handling performance. Widespread and continuing oral participation is an especially important part of your work in this course. Some adjustments in these percentages may be necessary if there are unexpected developments regarding the time spent in actual case representation.

*Appendix A* to this manual is a Self-Evaluation form. The criteria included in this evaluation are those with which you and your supervising attorney(s) will assess your performance at your midterm and final self-evaluations. These are also the criteria that clinic faculty will use in determining your course grade. We encourage you to review these criteria early and often so that you will know exactly what factors will be taken into account in assigning your course grade. During a designated week in the middle of the semester, you will be required to schedule

meetings with your supervising attorney(s) to review your progress in the Clinic. In anticipation of this meeting, you will be asked to fill out a midterm self-evaluation form, which will form the basis of your meeting with your supervising attorney(s). You will not receive a tentative grade. Instead, your supervising attorney(s) will discuss with you the criteria included in the form and your progress in the Clinic, and will provide feedback about your strengths and weaknesses in the Clinic. At the end of the semester, you will also be expected to fill out a more detailed self-evaluation and have an end-of-semester conference with your supervising attorney(s).

## II. TIME COMMITMENTS

All students are required to make a commitment of time to the Clinic with certain minimum demands established to assure assigned client matters are attended to. Students should be aware that a significant portion of their time commitment to the Clinic is on an unscheduled basis and may vary considerably from week to week, depending on the demands of their assigned cases.

Students enrolled in the Clinic will be expected to fulfill the following time requirements for successful completion of the course:

**Clinic I** students are expected to devote the time necessary to professionally handle client matters entrusted to them with a **minimum of 12 hours to be completed each week**. These hours must be reported on a weekly basis through completion of a time sheet for each case the student works on, as well as a time sheet for administrative matters, such as reflective writing assignments, case review meetings, class, etc. *Sample time sheets are attached at Appendix B.*

**Clinic II, III & IV<sup>i</sup>** students are expected to devote the time necessary to professionally handle client matters entrusted to them with a **minimum of 16 hours to be completed each week**. These hours must be reported on a weekly basis through completion of a time sheet for each case the student works on, as well as a time sheet for administrative matters, such as reflective writing assignments, case review meetings, class, etc. *A sample time sheet is attached at Appendix B.*

All students are expected to regularly attend the classroom sessions and designated Clinic meetings, consult with their supervising attorneys on a regular basis, regularly check case calendars, complete and update file memos and Case Activity Logs, check their mailboxes as well as their email accounts **daily** for messages, and keep case files organized, updated and the progress of assigned client matters current.

At the beginning of the semester, you will be given a form on which to provide the Clinic secretary with a schedule of your classes and telephone numbers where you may be reached in the event that it becomes necessary to contact you regarding an assigned case. Should any of this information change during the semester, it is your obligation to notify the Clinic secretary and your supervising attorney(s).

## III. CLINIC PROFESSIONAL RESPONSIBILITY

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<sup>i</sup> Because they are employed as Student Directors, Clinic IV students are required to commit more than 16 hours per week to Clinic responsibilities.



The opportunity to represent real clients carries with it certain professional responsibilities. All Clinic members are expected to review and scrupulously follow the requirements of the Rules of Professional Conduct.

#### A. Confidentiality

The Clinic shall maintain the highest level of confidentiality regarding applicants for legal services and clients accepted for services. Please read and be familiar with N.D. R. Prof. Conduct 1.6. Everyone in the Clinic is ethically and legally bound to keep all client information confidential. We cannot even disclose the name of a client, nor admit that a person is a client unless the client authorizes disclosure. No information whatsoever regarding clients shall be communicated to non-Clinic members, including other law students. This obligation to preserve confidentiality extends beyond the end of a semester or the termination of a case.

The keeping of privileged and confidential information about your cases is in contrast to the open atmosphere of the non-clinic law school classroom, where the exchange of information is encouraged. Because your clinic experience involves "real" cases, it is likely to be very exciting to you. You will be tempted to tell your friends and acquaintances about the work you are doing. However, you are governed by the same restrictions on confidentiality that govern practicing lawyers. Clients' names are not to be mentioned to anyone outside the Clinic. Facts revealed during your contact with clients are not to be repeated to anyone outside the Clinic. ***Failure to observe the rules regarding client confidentiality is cause for immediate expulsion from the Clinic and a failing grade.***

This obligation of confidentiality is a very serious matter. A breach of confidentiality could lead to dismissal from the Clinical Education Program and failure of the Clinic course for students, and the loss of the right to practice for supervisors. All communications about clients should be done with care. Do not discuss your clients in the Clinic if non-clinic visitors are present.

To further protect confidentiality, any client information that a student may have on her/his laptop computer must be purged at the end of each workday, before the student attorney leaves the clinic. Such information should be stored in the student's file on the Clinic server, where it can be retrieved the following day. Never leave a file or any case-related material open or lying on a desk overnight. Return all files to the open files drawer in the file room to assure that unauthorized persons do not have access to them.

#### B. Conflicts of Interest

Outside employment is not prohibited for Clinic student attorneys unless such employment could create a conflict of interest or the time commitment to outside employment would interfere with a student's ability to professionally handle client matters in the Clinic.

**If you are employed outside the Clinic, particularly in a law-related capacity, you must inform the Clinic Director as there is always the possibility of a conflict of interest and this must be resolved before you represent clients.** Prior to the start of the semester, you were provided with a form on which you were asked to list each place you have worked since you began law school. This information helps us determine whether we have a conflict of interest. In the event that you accept outside employment or volunteer work after the semester begins, it is

your responsibility to update this form and to notify your supervising attorney(s).

### C. Zealous Advocacy

Student attorneys are expected to represent clients with zeal and sensitivity to their needs. Clinic students will be expected to at all times behave in a courteous and professional manner with clients, opposing parties, attorneys and judges. Please remember that you are representatives of the Clinic and UND Law School in all you do in the Clinic and that your actions reflect upon those entities.

Inherent in notions of zealous advocacy as well as client-centered lawyering is ensuring that your clients are informed of any progress in their cases by means of written and verbal communication. Clients' most frequent complaint is that their attorneys do not keep in touch with them. You should check your Clinic mailbox for messages each weekday, return calls from clients promptly, and remind clients by phone and by letter of court dates and other important dates.

The Clinic strives to provide the highest quality legal representation to our clients. Consequently, preparation of case work must be thorough and timely. ***Significant and/or unreasonable failure to observe and fulfill your professional obligation to an assigned client may jeopardize your ability to obtain a passing grade in this course.*** If you experience problems meeting your professional obligations, you should discuss your situation fully with your supervising attorney at the earliest opportunity.

### D. Practicing Law Without a License

It is impossible to place too much emphasis on the Rules of Professional Conduct. Problems of professional responsibility appear in the simplest of situations without warning. Clients will often assume that anyone associated with the Clinic is a lawyer. Therefore, you should take extra precaution to advise all clients, opposing counsel, court personnel and others with whom you come in contact, that you are a law student working under the supervision of an attorney. This precaution will avoid any misconception or false reliance and protect you from unintended and unnecessary problems or the appearance of practicing law without a license.

## IV. PLAN OF SUPERVISION

The Clinic is dedicated to ensuring that appropriate supervision is provided to student attorneys in the handling of cases. Each student will work with a supervising attorney on every case assigned to her/him. The supervising attorney will meet on a regular basis with students in case conferences and will be available as much as is reasonably possible to assist and consult with students in their work in the Clinic.

Please keep in mind that each of the supervising attorneys has other students whom she supervises and with whom she must meet on a regular basis. Please discuss with your supervising attorney at the beginning of the semester her availability for supervision conferences. If your supervising attorney is unavailable, you may request assistance from another supervising attorney in the Clinic and particularly should do so if it is an emergency situation and the client would be prejudiced by awaiting the advice and counsel of your supervising attorney.

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All correspondence, pleadings, documents and briefs must be submitted to the student's supervising attorney for approval before the secretary will print the final draft. *If it is an emergency* and your supervising attorney is out of the office and unable to review the documents, you may have another Clinic faculty member review it for approval to prevent unnecessary delay. The Clinic secretary will not print any final document without a supervising attorney's approval. Your final draft of your document should be placed in the Drop Box on the Clinic File Server and the secretary will print a final copy. *(Instructions for accessing the Clinic Server and for placing items in the Drop Box may be found at Appendix C.)* **Students should never print a final copy of any work product on their own. All correspondence must contain an approval line for the supervising attorney.** Sending out any document without a supervising attorney's written approval may subject the student to a failing grade in the course, and exposes the student to the risk that s/he may be charged with practicing law without a license. Please note: these policies and procedures also apply to email correspondence.

Similarly, students should not communicate with opposing counsel orally without first discussing with their supervising attorneys what may be divulged. **No settlement proposal may be made or accepted without (1) receiving authority from the client and (2) discussing the proposal with the supervising attorney.**

Opposing counsel may call unexpectedly or run into you in the courthouse and attempt to take advantage of you. The attorney may question you in an attempt to discover information about the case, or press for an immediate reply to a settlement offer on the pretext that the attorney needs an immediate answer and cannot wait.

You should become comfortable with responding that you do not have authority to divulge the information sought or to accept the offer and that you must first check with your supervising attorney. You should then check with your supervising attorney before proceeding. This will protect you from succumbing to the pressure of experienced and sometimes intimidating opposing counsel, and prevent you from binding the client to a position for which you did not plan, anticipate or prepare.

The Clinic faculty will guide and assist you as you assume the role of "lawyer" on your assigned cases. It is their oversight that acts as the "safety net" for your practice. It is important for you to meet with your supervising attorney promptly at the beginning of the semester so a plan of supervision can be discussed with you and you may begin work on your cases. You should always consult with your supervising attorney *before* taking any action on a case. For example, talk with your supervising attorney before calling a client or opposing counsel, drafting a letter, contacting a potential witness, etc. Doing so will ensure that the client's interests are protected, that professional responsibility obligations are met, and that your learning experience is as broad and deep as possible.

Additionally, it is imperative that you keep your supervising attorney and any other members of your case team posted as to any developments that occur in your cases. Consequently, if you receive a letter, motion or other significant document related to one of your cases or have a telephone call or meeting with someone related to your case, ***you must notify your supervising attorney immediately.*** This means routing correspondence, pleadings, discovery requests, etc., to your supervising attorney (and any other members of your case team), and drafting memoranda

documenting any other significant events that occur in the case. Procedures for drafting, filing and circulating such memoranda are discussed in Section VIII(B) below.

Additionally, it is the responsibility of each student attorney to ensure that all deadlines and other significant dates in cases are written on the Clinic master calendar posted on the bulletin board in the student workroom outside the clinic faculty offices. The purpose of calendaring these dates is twofold: first, to make sure that everyone associated with the case is aware of the deadlines; and second, to allow student attorneys, faculty and staff who are not working on the case to know about upcoming court appearances and other significant events so that they may observe, support and learn from the student attorneys who are handling the case.

All of the Clinic faculty are dedicated to maximizing your educational experience and helping you become an effective and reflective practitioner. If you follow clinic procedures and complete your required work promptly and thoroughly, your ability to take control of the strategy, theory and planning of your cases will be maximized. Your supervisor can only have confidence in your ability to handle lawyering responsibilities if you demonstrate the ability to competently and professionally represent the interests of your clients.

## V. CLINIC CLIENTS AND CASES

### A. *Where does the Clinic get its clients?*

The Clinic obtains clients by referral, often from Legal Assistance of North Dakota, through the private bar, and by word-of-mouth. Because Clinic resources are limited and our educational mission must be accorded primary importance, we are unable to represent every person who contacts us for legal representation. However, Clinic policy is to select clients who are unable to obtain representation elsewhere, either because they cannot afford to hire a lawyer or because their matter is deemed too controversial or is a conflict of interest for other attorneys. Clinic faculty strive to select clients with legal matters that will provide valuable and diverse learning experiences for Clinic students.

### B. *Clinic Fees*

The legal services of the Clinic are without cost. However, all clients are required to pay an administrative fee of \$5.00 before work can begin on their cases. This administrative fee is designed to offset certain office overhead expenses (e.g. telephone, postage, office supplies, etc.), and is typically explained to the client at the initial interview.

If a client's case includes litigation, the client must pay in advance all court costs and/or service fees before the action can be filed or papers served. We also seek reimbursement from the client for extraordinary telephone or photocopying expenses. The status of a client's account can be verified with the Clinic secretary at any time by the student assigned to the case, who is responsible for collecting all fees from the client.

### C. *Timesheets*

As noted above, you are expected to document the time you spend on Clinic cases and course work on a weekly basis. This means that each week you will turn in at least two time sheets to your supervising attorney(s): a case time sheet and an administrative time sheet. If you have

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more than one case, you will turn in a separate timesheet for each case. The case time sheet(s) should contain entries about everything you do related to that case. Consequently, if you have a case-related meeting, write a letter, make a phone call, conduct research, etc., and it is on behalf of one of your clients, that activity should be entered onto the weekly time sheet for that case. All other Clinic work should be written on your weekly administrative time sheet. Typical entries on an administrative time sheet include time spent reading materials for class, attending class, preparing for and attending case review, drafting guided and unguided writing assignments, answering the Clinic telephone, etc. *For samples of both the case and administrative time sheets, please see Appendix B.*

The time sheets serve several purposes. First, they serve as written documentation of your satisfaction of the hourly requirements necessary for receiving credit for the Clinic course. Additionally, they are a resource for you and your supervising attorney to use in assessing one aspect of your performance—that is, the amount of time it took you to complete a particular task, such as researching an issue, drafting a document, etc., and whether there might be ways to improve your skills to help you work more efficiently and effectively.

Finally (and perhaps most importantly), many of the cases we handle (particularly in the CRP) involve statutes that contain “fee-shifting” provisions. These provisions permit a prevailing plaintiff in a case to petition the court to have her attorneys’ fees paid for by the defendant. Fee shifting provisions were (and continue to be) placed in many civil rights statutes by Congress in recognition of the fact that many of the people whom the statutes were designed to protect have difficulty obtaining counsel to represent them, either because of a lack of financial resources or because their cases (or the clients themselves) might be unpopular in the community. By inserting these provisions that help ensure payment of the attorneys who represented the plaintiffs (at least when they win their cases), Congress hoped it might make it easier for plaintiffs to find counsel to represent them.

Even though we do not charge clients for our legal representation, we are eligible to petition the court for attorneys’ fees if our clients are the prevailing parties in their cases. This is extremely important for the Clinic and its current and future clients, as any money we are able to recover through attorneys’ fees can be used to help future low-income clients front the expenses associated with litigation (such as deposition costs, filing fees, etc.) In assessing an attorneys’ fees petition, the court will scrutinize our time sheets, as these are the only contemporaneous evidence of the amount of time spent on each task in the representation. In some cases, courts have found that the entries on the time sheets are not sufficiently detailed or descriptive and have reduced or even denied an award of attorneys’ fees on that basis. This is why it is so important to ensure that your time sheets are accurate and current.

Both administrative and case time sheets should be typed. Forms for both types of timesheets are on the Clinic Server in the subfolder “Forms.” To use these time sheet forms, make a copy of each form and save it in your student file on the server. You can then enter the data on each sheet as you do your Clinic case and course work each week, and print the timesheets at the end of the week and turn them in to your supervising attorney(s) for approval. Case time sheets should be submitted to the supervising attorney with whom you are working on that case. All administrative time sheets should be turned into Laura.

## VI. STUDENT WORK SPACE

We are very lucky to have fifteen student work areas in the Clinic—enough for each student attorney to have a dedicated workspace. At the beginning of the semester, there will be a random drawing for the assignment of these spaces. Additionally, we have a conference room where students can meet with clients, have case team meetings, etc. The Clinic secretary will maintain a sign-up sheet for use of the room, which can be reserved on a first-come, first-served basis. Please note: Students should not congregate or visit in the reception area of the clinic as this may compromise client confidentiality and detracts from the professional image of our law office.

## VII. OFFICE EQUIPMENT AND SUPPLIES

Computers are available for student use in the Clinic and you are encouraged to make full use of them. However, under no circumstances are students to use the computers of the clinic faculty in their individual offices. If you are covering the front desk while the Clinic secretary is away, you are permitted to use the secretary's computer, and will be able to log in as a student. *Permission to use the secretary's computer is not a license to use other items/supplies on her desk, or to go through any of her desk drawers.*

Use of the computers should be limited to Clinic work only. Students may print items such as file notes and draft documents students, but should not print final documents or items on letterhead. For consistency in formatting, please use 12 pt. Times New Roman font when drafting pleadings and documents in the Clinic.

A photocopy machine is available for copying materials necessary for representation of clients. Each student will be assigned a copy code. Office supplies are not available for students' personal use. You must supply your own legal pads, pens, computer disks, etc. as you would for any other class.

## VIII. FILE ORGANIZATION

All client files should remain in the file cabinets in the file room and should be removed only for work undertaken by the student and returned immediately upon completion. ***No client file should remain lying unprotected on the worktables or elsewhere in the office.*** This is necessary to ensure client confidentiality and preserve our control over the files in the office. Additionally, client files are to remain in the office at all times, unless needed for a court appearance or other case-related event. In the event of an emergency, a student may request permission from her/his supervising attorney to sign out a file overnight. Under no circumstances should files be removed from the office without the express permission of the student's supervising attorney.

It is the responsibility of the student(s) assigned to the case to keep the file up to date at all times. Students are responsible for making certain that copies of all correspondence and documents are placed in client files and attached securely. Any lawyer should be able to pick up the case file and after a quick review, know exactly what has happened to date and what is the next thing to be done. Please keep in mind that many files will, of necessity, continue on after you have completed your semester(s) in the Clinic, and the file should document as complete a history of the case as possible to minimize the effects of transfer of the file to a new student.

While there may be some variation from file to file (depending on the nature of the case), all Clinic case files should have, at a minimum, the following sections, each of which should be in a separate folder:

A. Client Documents

- Retainer agreement
- Original documents provided by client

B. Chron/Memoranda

- The left side of this folder should have the Case Activity Log clipped to it. **Everything you do on the case—making a phone call, writing a letter, meeting with a client, etc., should be recorded on this log.** Unless the activity can be described very briefly (i.e., 3-4 lines), you should also write a memorandum to the file describing whatever the activity was, and indicate in the Case Activity Log that such a memo was written and the date of the memo. The memo should then be clipped to the right side of the same folder, in reverse chronological order. For example, assume that you have received a telephone call on 9/21/03 from your client in a family law case in which the client informs you that her husband did not show up at the time designated for him to have visitation with his children. She also tells you that this is the fourth time this has happened and she wants to know whether this will affect his petition to modify custody. For file maintenance, purposes you should do the following: (1) draft a memo to the file in which you describe, in as much detail as possible, the contents of your conversation with your client. One copy of that memo should immediately be placed in the file on the right-hand side; a second copy should be circulated to your supervising attorney and all other case team members; (2) make a notation on the Case Activity Log of the telephone call in which you include the date/time of the client's call and a brief description of the discussion. You should also include something like the following at the end of the notation in the Case Activity Log: "For more info on this call, see memo dated 9/21/03 in Chron file." Similarly, if we are served with a motion, that document will ultimately be filed in the Pleadings file (after it has been circulated to all members of the case team, including the supervising attorney), and an entry indicating that it has been served on us should also be made in Case Activity Log.
- The right-hand side of this folder should have all case-related memoranda and notes clipped to it in reverse chronological order.

C. Correspondence

- On the left-hand side of the folder should be a sheet that lists contact information for the client(s), opposing counsel, and any other persons/entities who are regularly contacted in connection with the case.

- All correspondence (including email messages) should be clipped in reverse chronological order to the right-hand side of the folder.

#### **D. Pleadings**

- The folders for the Pleadings file are heavier than the traditional manila folders we use for all other files. Each document in the pleadings file should be numbered and should be clipped in the file in reverse chronological order. **DO NOT EVER WRITE ANYTHING ON A PLEADING (OR ANY OTHER ORIGINAL DOCUMENT);** if you need to mark up a pleading, make a copy of the one in the official Pleadings file and write only on that one. Additionally, numbers should not be attached directly to the pleading, but should be attached to a plain piece of white paper that will serve as a divider between each of the documents. The Clinic secretary can provide you with index tabs that should be used for numbering the pleading dividers.
- The left side of the Pleadings file should have an index of all the pleadings. This index must be updated every time a new pleading is placed in the file. Each index entry should include the number of the document, the name of the document and the date of the document.

#### **E. Research**

- Every time you research an issue and write a memo about it, a new folder should be established for that research issue. The right side of the folder should have clipped to it all the cases, statutes, articles, etc., that were used as sources for the memo, and the left-hand side of the folder should have a final draft of the memo clipped to it. A case with a number of complex legal issues might have several folders devoted to various research issues. For example, in a complex employment discrimination case brought under the Americans with Disabilities Act, there could be a research folder for each of the following topics: (1) Definition of “an individual with a disability”; (2) Whether the defendant is a “covered entity”; (3) What conduct constitutes “discrimination” under the ADA; (4) What are the factors in assessing “reasonable accommodation,” etc. In a custody case, separate research folders might include: “domestic violence presumption” and “moving child out of state,” and so forth.

#### **F. Time Sheets**

- This folder will contain all of the time sheets for the case. Only time sheets that have been signed by the supervising attorney and given to the Clinic secretary for input into the system should be placed in this file. Consequently, the Clinic secretary will almost always be the person who files the time sheets rather than the student.

#### **G. Litigation Chart**

- This folder should contain the most recent version of the litigation chart in the case. (You will learn how to prepare a litigation chart in one of the Clinic classes early in the semester.)



The above-listed subfolders will be present in every case, but case files may also include a number of other subfolders on topics such as: “Discovery,” “Media,” “Costs,” etc. Before setting up additional subfolders, please consult with your supervising attorney and other case team members.

The Clinic secretary will prepare the folders for each of these types of documents when a new case is opened; however, it is the student attorney’s responsibility to ensure that materials are properly filed and that logs and indexes are updated during the semester.

In addition to the physical file, each client also has an ‘electronic file’ that resides on the Clinic Server. The electronic file contains all of the folders listed above, as well as one additional file entitled, “Drafts,” into which working drafts of case-related documents can be placed while you are still working on those documents. The **final electronic version** of every document should be put in its proper electronic folder, just as the final version of the physical document is filed in the client’s physical folder. The Clinic Secretary will ensure that all electronic documents are properly filed in the client’s electronic file ***but can only do so if you observe the following procedure***: when a document is in final form (that is, your supervising attorney has signed off on the final draft), place the document in the Clinic Drop Box for final printing. When the secretary prints the document, she will also file it in the proper electronic folder in the client’s file. *Appendix C contains instructions for placing documents in the Drop Box.*

When you finalize a document in a case and obtain approval from the supervising attorney, it is important to name the final draft using conventions that can be readily understood by all. Because the final version of the document will be placed by the Clinic secretary into the client’s electronic folder, the document name need not include the name of the client. What is important is that the name of the document specifically indicates what the document is and when the document was finalized.

For example, if you complete a complaint for the Jenna Smith file on August 31, 2003, an appropriate name for the final version would be “complaint 083103.” It is not helpful to call the document “smith complaint 083103,” because the Clinic secretary will be placing the document into the Smith electronic file, and thus, all documents in the folder will pertain to the Smith case.

Correspondence and memos especially need to have names that incorporate the date of the document. For letters, it is most helpful to use the name of the recipient in the name of the document. Thus, a letter written in the Smith case to opposing attorney Stephen Garcia on April 10, 2003, might be named “Garcia 041003.” It is not necessary to name the document “Garcia letter 041003” because the Clinic secretary will be placing the document into the “correspondence” section of the Smith electronic file. A November 5, 2003 letter to the client could be named “client 110503.” Letters to the clerk of court may be called “clerk [date].”

Memos and motion-related documents should be named using specific issues addressed. A  
memo  
finalized on September 14, 2003 analyzing the admissibility of evidence of prior bad acts could be named “prior bad acts 091403.” There is no need to use the word “memo” in the name because the document will be saved in the “memoranda” file. Any motion filed will typically have several separate documents, including a notice, motion, brief in support, affidavit in

support, and proposed order. A set of documents filed on December 1, 2003 in support of a motion to compel discovery might then be called, "compel notice 120103," "compel motion 120103," "compel brief 120103," "compel aff Jones 120103," and "compel order 120103." Naming each of the documents with the same first word ("compel") will help keep them together on a screen and including the date will distinguish these documents from similar documents that could be filed, in the same case, at a different time.

This may appear complicated at first, but as you work with the computer server you will better understand the reasons why naming documents with these ideas in mind helps everyone better maneuver through the system.

If you are working on a draft document that is not yet in final form, please save it in the client's file in the "Drafts" folder. In this way, other members of your case team and your supervising attorney can access the document if necessary.

## **IX. SEMESTER CLOSING REQUIREMENTS**

In order to allow for transition and case supervision, each student attorney is required, at the end of the semester, to do the following:

1. Complete a Case Status Report Form (*see Appendix D*) for each file, stating specific actions needed to be taken as well as any special problems. You should note any court or administrative proceedings to be held and make any recommendations you have as to how to proceed next.
2. Meet with your supervising attorney(s) and bring with you a list of your cases. You should be prepared to discuss the cases and their status.
3. Draft a transition memo for each case that has been assigned to you. A final copy of this memo must be approved by your supervising attorney and placed in the file prior to the start of the final exam period.
4. Send a letter to your clients advising them that you will be leaving for the semester break and that they may contact your supervising attorney during this transition time. If you will not be returning the following semester, you should also explain that another student attorney will be assuming responsibility for the client's case.

## **X. TELEPHONE GUIDELINES**

### **A. Answering the Telephone**

This is usually the first contact with a prospective client and it is important that the

attorney/client relationship begin on a good note. Even if the caller is not a client, it is still very important that telephone calls be handled in a professional manner as every individual who contacts us is deserving of our respect. **NO COLLECT CALLS SHOULD BE ACCEPTED.**

### **B. No Legal Advice Provided Over the Telephone**

It is a cardinal rule in the Clinic that *no legal advice is to be provided over the telephone*. The reason for the rule is to prevent miscommunication and potential malpractice.

### **C. What to Say**

The proper initial inquiry is "Good Morning (Good Afternoon) Law Clinic, may I help you?"

*If the person calling is generally looking for representation from "Legal Aid,"* you should state the following: "If you are looking for general legal services and have not yet applied through Legal Assistance of North Dakota (LAND), you should first contact them. LAND now conducts intake for potential clients over the phone. LAND's telephone number is 1-800-634-5263, and they have someone available to conduct a telephone intake Mondays, Wednesdays and Fridays from 8:30-noon and 1:00-4:30 p.m."

*If the person says that s/he has been referred to us by LAND or another attorney,* you can explain the following: Our attorneys and law students meet with people by appointment only. Generally, we like to speak with potential clients via telephone before scheduling an appointment so we can determine whether you have the type of case we can accept. If you would like, I can take your name and number and have someone call you back.

- If the person calling says s/he has a civil rights or discrimination complaint, give the call to Laura (or take a message if she is unavailable).
- If the person calling says s/he has been referred to us by LAND and/or has any other kind of complaint, give the call to Margaret (or take a message if she is unavailable).

### **D. Messages**

If a call is not urgent and the Clinic member sought is out of the office or unavailable, a written message should be taken. The message to the staff member should include the **name of the caller, the date, time and nature of the call, and a telephone number where the call can be returned**. The person taking the message should also write her/his name on the message in the event there are questions.

### **E. Other Telephone Skills**

The telephone system may be difficult to operate for first time users and it may be expected that some calls will be disconnected during the transfer process. Therefore, it is important that on all calls transferred during the first few weeks of the semester, the names and telephone numbers of the callers be taken prior to attempting transfer. If the line is busy or no one answers, to return

the incoming caller, simply depress **Recall** and you should have the caller back on your line.

### ***From Kathie's Desk***

There are three incoming lines on the receptionist telephone. When the phone is in use and another call comes in, after three unanswered rings the call is transferred to the telephone in the student directors' office. If that line is busy, the call is transferred to voice mail.

TO ANSWER AN INCOMING CALL: Press the call appearance button of the incoming call (green light will blink).

TO PUT A CALL ON HOLD: Press Hold \* The green light flutters

TO RETURN TO A HELD CALL: Press the call appearance button of the held call.  
\*You are connected to the held call

TRANSFER: To send a call to another extension or outside number

Press Transfer. (You will hear a dial tone)  
The present call is put on hold.

Dial the extension or number to which you will transfer the call.

Remain on the line and announce the call if you wish (If the dialed number is busy or unanswered, return to the held call by pressing its call appearance button)

Press Transfer again. The call is sent to the dialed extension or number.

Hang up.

### ***From Other Office Telephones***

A call within the Clinic office can be transferred to another extension by depressing **Recall**, dialing the five digit extension number (7-xxxx) of the person sought, informing her/him of the nature of the call, and waiting until the person is ready to take the call and hanging up the receiver.

A call can be placed on hold by first depressing **Recall**, dialing \*4 and then laying the receiver down - not hanging up. When a call is ready to be continued, hang up the receiver. The phone will ring with three short rings; you answer and resume your conversation. As with transferring calls, the name of the caller and return number should be taken in the event the call is disconnected.

To answer calls coming into the main Clinic (2932) or any other telephone in the Clinic from the extension where you are, it is necessary to pick up your receiver, listen for the dial tone, and dial \*7. You should have the caller on your line.

## **F. Long Distance In-State and Out-Of-State**

If a long distance call is necessary for a case, the student attorney wishing to make the call should contact the supervising attorney for permission and to receive the proper directions and authorization code. In the interest of minimizing our overhead expenses, ***all long distance calls must receive prior approval of the supervising attorney and be made only when the matter could not be concluded as satisfactorily by written communication.*** When a long distance call is made, a telephone report form should be completed and given to the secretary so these charges may be assessed to the client. *(A sample form is attached at Appendix E.)*

### **G. Telephone Duties Generally**

Answering the telephone will be a duty required of all Clinic students when the secretary or a student director is not available. When problems arise with the telephone, students should feel free to ask questions of Clinic faculty and staff, who will be happy to assist in resolving the situation.

## **XII. SAFETY AND SECURITY**

While the Grand Forks community, the Law School and the Clinic are generally very safe places, occasionally incidents of violence or threats do occur. We therefore have taken several precautions to help ensure the safety of Clinic students, staff and faculty. First, we have a silent alarm system in our office that will ring in the Campus Police Department office. There are buttons that activate the alarm in two places in our office: (1) at the Clinic secretary's desk; and (2) on the bulletin board in the student workroom outside the Clinic faculty offices. These buttons look very much like garage door openers and are silent when pressed. ***If for any reason you feel unsafe or need to summon a campus police officer, please do not hesitate to use one of these buttons or to call the Grand Forks police at 9-911.***

Additionally, to further ensure the safety of everyone in the Clinic, the office door is locked every day at 4:30, which is the time our Clinic secretary leaves for the day. If you are working in the Clinic after 4:30 p.m., please make sure you have your key with you at all times to avoid being locked out of the office.

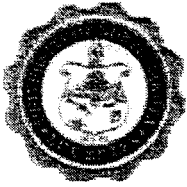
## **XIII. FUNDAMENTAL POLICIES OF THE CLINIC**

1. Regularly review your cases with your supervising attorney.
2. Maintain accurate and detailed records in the Case Activity Log in the Chron file on those cases that have been assigned to you.
3. Prepare memoranda regarding any conversations you have with clients, witnesses, opposing counsel, other parties, etc., in each case.
4. Read, know and follow the Rules of Professional Conduct.
5. Except in extraordinary circumstances, all letters and documents should be submitted for approval and typing well enough in advance of deadlines so that the secretary has sufficient time to complete it. Please be aware that the Clinic secretary is handling matters for all the students, student directors, and Clinic

faculty, and plan accordingly.

6. Make sure to photocopy all outgoing documents and correspondence and ensure that signed copies are placed in client files.
7. Notify your supervising attorney, in a timely fashion, whenever there is a substantial likelihood that completion of a clinical assignment cannot be done within a time frame previously agreed upon between the student attorney and the supervising attorney.
8. Do not, under any circumstances, give legal advice over the telephone.
9. Disclose any perceived conflict of interest to your supervising attorney.
10. Do not discuss or otherwise disclose information regarding clients or applicants with other law students who are not current members of the Clinic or anyone else unless it is part of your representation of an eligible client. MAINTAIN CLIENT CONFIDENTIALITY AT ALL TIMES.
11. Keep clients advised as to developments in their cases and always notify clients of the transfer of responsibility for their case to another student or supervising attorney.
12. Be careful not to mislead clients, witnesses, opposing counsel, etc., into believing that you are an attorney.
13. At all times, student attorneys shall treat clients, opposing parties, attorneys, court personnel and Clinic staff with professional courtesy and respect.

## The University of North Dakota



### Clinical Education Program

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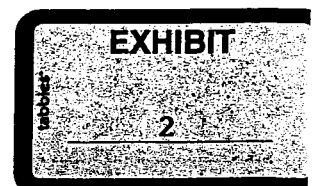
Welcome to the University of North Dakota Clinical Education Program website. We are pleased to be able to use the Internet to share information about the important work of our program in providing legal representation to individuals and groups in North Dakota who cannot afford private attorneys or who cannot obtain other available legal assistance.

During the 2003-2004 academic year, the University of North Dakota Law School Clinical Education Program offers the following projects and services in its clinical program:

#### Civil Rights Project

The Civil Rights Project began operation in the Fall 2002 semester. Laura Rovner, Director of the Clinical Education Program, also directs the Civil Rights Project. Student attorneys working in the Civil Rights Project provide a variety of legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties. One reason clients of the Civil Rights Project are unable to find other lawyers to represent them is due to their lack of financial resources. In our community, as elsewhere, the vast majority of lawyers provide legal assistance only to those who can afford to pay for their services. And in recent years, federal funding, the major source of funding for legal services for people with low or no incomes, has been reduced dramatically. A second reason Civil Rights Project clients are unable to find lawyers elsewhere relates to the types of cases they may have, which often involve controversial issues or conflicts of interest for other lawyers.

Student attorneys in the Civil Rights project practice in federal and state courts and before administrative agencies in a broad range of civil rights matters,



including disability, race, gender, age and national origin discrimination, sexual harassment, and constitutional law issues.

### **Civil Litigation Project**

The Civil Litigation Project (CLP) provides students with the opportunity to represent clients in state and federal courts and before administrative agencies in a wide variety of civil matters under the supervision of Visiting Professor Margaret Moore Jackson, who directs the CLP. The CLP docket includes landlord/tenant, consumer rights, employment and family law cases, among others. CLP cases are selected with two goals in mind: first, to give students the chance to explore a range of different substantive areas of law in a variety of legal settings; and second, to provide representation to persons in our community who would not otherwise be able to find counsel.

We welcome your questions and comments. Thank you for taking the time to view our site.

Laura L. Rovner,  
Associate Professor of Law  
Director, Clinical Education Program  
email

To contact us:

We are located in the northwest corner (Room 2) of the basement of the Law building on the campus of the University of North Dakota.

Clinical Education Program  
P.O. Box 9003  
Grand Forks, ND  
58202-9003  
1-701-777-2932 (voice)  
1-701-777-6301 (fax)

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## The University of North Dakota

**Academic Clinical Program****Clinical Education  
Program Projects****Description of  
Clinical Courses**

The Clinical Education Program of the School of Law provides students with the opportunity to integrate the theory and practice of law in a real law office setting. In the clinic, students assume the role of lawyers, and in doing so, move beyond the classroom into the world of law practice. In the course of representing their clients, students gain "hands on" experience with substantive law, the many skills of lawyering, and the rules of professional ethics as well as the opportunity to reflect on their experiences through class discussions, "case rounds" sessions, one-on-one faculty supervision and research and writing.

Students enrolled in the Clinical Education Program provide representation to eligible clients through two Clinic Projects: The Civil Litigation Project, which represents clients who have legal disputes involving the following areas of law: domestic relations, landlord-tenant, consumer, and employment law. Additionally, in 2002, the Clinic began operation of the Civil Rights Project through which students provide a variety of legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties. These students practice before federal and state courts and administrative agencies in a broad range of civil rights matters, including disability, race, gender, age and national origin discrimination, sexual harassment, and constitutional issues.

Under the Rule for the Limited Practice of Law by Law Students adopted by the North Dakota Supreme Court and the United States District Court for the District of North Dakota, certified third-year law students are permitted under clinic faculty supervision to represent actual clients in state and federal court. Second-year students are able to represent clients before administrative agencies.





[← Back to School  
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Posted on Mon, Nov. 04, 2002

## MAILBAG: Legal Aid Association 'shalt not' fight the 10 Commandments

FARGO - On October 28, Laura Rovner, director of the Legal Aid Association of North Dakota ("LAND"), appeared at a Fargo City Commission meeting with others of her organization to demand that the city of Fargo remove the Ten Commandments monument in front of City Hall.

I can understand the ACLU undertaking such an assault in furtherance of their agenda of moral corruption and unbelief. It is wholly inappropriate, however, for a government-funded agency to engage in such ideological warfare.

When it comes to the poor, LAND has a long list of significant legal issues which it will not litigate, namely adoption, criminal charges, malpractice, name changes, paternity, probate, personal injury, traffic violations, workers' compensation, juvenile matters, DUI's, job discrimination, NSF checks, mental health commitments, and drivers' license suspensions. All of these practical matters LAND is too busy to litigate, or uninterested in pursuing on behalf of the impoverished.

Yet Rovner has time to entertain some parlor atheists who delight in attacking the faith of millions in furtherance of their religion that there is no god. I am truly amazed I did not realize that NDSU professor Jon Lindgren is so poor as to qualify for a welfare lawyer.

I believe the North Dakota Legislature, which will be convening in January, will be appalled to learn that the UND law school budget is being deployed to fund the litigation objectives of a narrow (and impoverished) group of militant atheists.

*Martin Wishnatsky Photo Inspired*

**memories of**

**teams, players** GRAND FORKS - It was with great pleasure that I saw the picture of the 1930 Sioux football team and President Hoover in the Oct. 19 Herald. For many years this picture hung on my father's wall and I often had him go over the names of his teammates. He often spoke of his close friends on the four Sioux teams he played for, including former UND Athletic Director "Red" Jarrett.

My father is standing in the top row, second from the left side. He is standing next to C.D. Locklin, who was to remain the Herald's pre-eminent sportswriter for many years to come.

My father was a blocking back and extra point kicker (hence our shared nickname "Boots") and remained an ardent Fighting Sioux fan and backer until his death. While a member of the same North Central Conference as today's Fighting Sioux, he played against many prominent teams that would be considered Division I. Something I never did hear was how the Army game came to be.

One of my father's great disappointments was not being able to play UND basketball (reportedly his best sport) because of financial restrictions. His scholarship then consisted of a job at the Budge Hall bookstore.

Thank you again for recognizing these outstanding teams.

*William Lloyd "Boots" Richmond, Jr. Coal-fired plants*

**add little mercury**

Make the most  
of your home  
**ENTERTAINMENT**



When you've had  
it up to **HERE** with

**Acid  
Reflux  
Disease**

**EXHIBIT**

4

To the Editor:

I write in response to Mr. Wishnatsky's letter regarding the University of North Dakota Legal Aid Association's representation of five clients seeking to have the Ten Commandments monument removed from Fargo government property.

The separation of church and state is a right conceived by the framers of the Constitution and considered to be of such importance that it was set forth first in the Bill of Rights. The actions of our clients in questioning the appropriateness of maintaining a religious monument at the heart of Fargo's civic center are not those of "parlor atheists," as some would suggest, but rather those of citizens concerned with guaranteeing the ongoing integrity of our Constitution and the freedoms it embodies. One need not be an atheist to believe that it is inappropriate for government to make adherence to religion relevant in any way to a person's standing in the political community.

It is difficult for me to conceive of a more appropriate activity for the University of North Dakota's Law School clinic to be engaged in than the assertion and protection of the constitutional rights of the citizens of this State. The fact that some members of the community disagree with the views of our clients does not change this in any way. Indeed, to believe otherwise would be to take the position that the clinic could never represent clients whose beliefs are not shared by the majority; a result that would deny those with unpopular views "a place at the table." The assertion that funds of Legal Assistance of North Dakota (LAND) are being expended in connection with this matter is simply false (a fact of which Mr. Wishnatsky is well aware in light of our lengthy conversation on this point prior to the publication of his letter). The Legal Aid Association is a clinical legal education program of the UND School of Law. Although the Legal Aid Association does receive a subgrant from LAND through which it represents low-income people in Grand Forks County, the Civil Rights Project of the clinic, which represents the clients in the Ten Commandments matter, is wholly separate from the LAND project. As I explained to Mr. Wishnatsky during our telephone conversation last week, not a single LAND dollar has been or will be spent on this case.

The UND Legal Aid Association is honored to be working with clients who have the courage to assert that their local government should respect the guarantee of religious freedom embodied in the First Amendment to the Constitution. Mr. Wishnatsky's claim that his personal religious beliefs should shape the society that we all share simply underscores the importance of the separation of church and state, and the legitimacy of our clients' concerns.

Very truly yours,

Laura L. Rovner  
Director, Legal Aid Association  
Associate Professor of Law  
University of North Dakota School of Law

EXHIBIT

5

**Martin Wishnatsky**  
**P.O. Box 413**  
**Fargo ND 58107**

October 29, 2003

Laura Rovner, Director  
Clinical Education Program  
University of North Dakota School of Law  
P.O. Box 9003  
Grand Forks, ND 58202

Dear Director Rovner:

I would like the assistance of the Clinical Education Program in bringing suit against Grand Forks County and other relevant parties for having a statue of the goddess Themis on top of the Grand Forks County courthouse.

This statue was recently refurbished.<sup>1</sup> Its reinstallation was a major event, which included participation by Supreme Court justices and state judges, and coverage on the North Dakota Supreme Court website.<sup>2</sup>

As a Christian I find such representations of pagan religious figures in public places very distressing. I feel like a second-class citizen when subject to such governmental displays and state-sponsored internet reports. As I frequently read the news section of the North Dakota Supreme Court website, I unavoidably was confronted with these reports and celebrations in which several justices themselves participated.

Unfortunately, I do not possess the expertise properly to research the pagan religious origins of the Themis statue and to present the facts demonstrating its roots in heathen worship.<sup>3</sup>

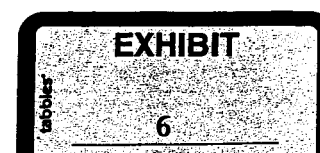
I request the assistance of the Clinical Education Program in developing a lawsuit on the same basis as that granted to the atheistic North Dakota State University professors to bring suit against the City of Fargo over the Ten Commandments monument.

---

<sup>1</sup> *Grand Forks Herald*, May 21, 2003

<sup>2</sup> [www.court.state.nd.us/%5Fcourt/news/themispics.htm](http://www.court.state.nd.us/%5Fcourt/news/themispics.htm)


<sup>3</sup> For example, see [www.commonlaw.com/Justice.html](http://www.commonlaw.com/Justice.html)



Laura Rovner  
October 29, 2003  
Page Two

Please reply at your earliest opportunity.

Sincerely,

  
Martin Wishnatsky

cc: Rep. Jim Kasper



Herald file photo

**Themis**, Greek goddess of law and order.

## Goddess gotcha

■ Fargo activist wants UND law school help removing Greek goddess from GF County Courthouse

**By Stephen J. Lee**  
Herald Staff Writer

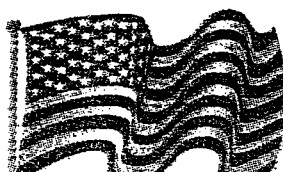
A Fargo Christian activist has asked a UND law school professor to help him sue to get the pagan goddess removed from atop the Grand Forks County Courthouse.

Activist Martin Wishnatsky is using the same legal argument used to attempt to oust Fargo's civic display of the Ten Commandments.

Wishnatsky wrote a letter dated Oct. 29 to Laura Rovner, director of the clinical education program at

**THEMIS:** See Page 6A

## VETERANS DAY



10/31/03 GF HERALD

# Pawley

■ Governor wants to

**BY Bill Sallsbury**  
St. Paul Pioneer Press

Proponents of toughening Minnesota's drunk driving standards got a big boost Thursday when Gov. Tim Pawlenty announced his strong support for lowering the legal blood-alcohol limit.

Although Pawlenty, a co-sponsor of the lower-limit bill during his legislative career, is not the first Minnesota governor to support the change, he is the first to make it a high legislative priority, said Lynn

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# Harbin

■ Local



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6A www.GrandForksHerald.co

## THEMIS/

Continued from Page 1A

UND's School of Law. He provided a copy of the letter to the Herald.

"I would like the assistance of the clinical education program in bringing suit against Grand Forks County and other relevant parties for having a statue of the goddess Themis on top of the Grand Forks County courthouse," Wishnatsky wrote.

Themis was the ancient Greek goddess of law and order and traditionally has been a symbol at U.S. courthouses, her eyes blindfolded and holding the scales of justice.

She was said to be the titan daughter of Gaia and Uranus, to have had children by Zeus and charged with making humans more moral.

Her statue has graced the Grand Forks County courthouse for nearly 90 years. This spring, it was reinstated — after being removed for repairs — with a short ceremony attended by local judges and others.

The reinstatement was written about on the Internet site of the North Dakota Supreme Court.

"As a Christian, I find such representations of pagan religious figures in public places very distressing," Wishnatsky wrote to Rovner. "I feel like a second-class citizen when subject to such governmental displays and state-sponsored Internet reports."

Wishnatsky is one of the most visible and constant opponents of abortion in the state, demonstrating in Fargo and testifying in the legislature in Bismarck. He's been involved in litigation several

He identifies himself as holding a doctorate in political science from Harvard and is outspoken about his Christian faith.

He's been a public supporter of the Fargo Ten Commandments display.

Rovner heads the new program at UND's law school, the Civil Rights and Disabilities Project, which has taken on as clients the opponents of the Fargo Ten Commandments display.

The opponents say the display is an unconstitutional establishment of religion.

North Dakota Rep. Jim Kasper, R-Fargo, asked earlier this year for an opinion from Attorney General Wayne Stenehjem on whether it was legal for the law school's faculty and staff to assist in the Fargo case. Stenehjem ruled the law school was within its rights to take on the case.

Always earnest in his activism, Wishnatsky also seems to be tweaking UND officials in his letter.

"Unfortunately, I do not possess the expertise properly to research the pagan religious origins of the Themis statue and to present the facts demonstrating its roots in heathen worship," he wrote Rovner. "I request the assistance of the clinical education program in developing a lawsuit on the same basis as that granted to the atheistic North Dakota State University professors to bring suit against the city of Fargo over the Ten Commandments monument."

Rovner said Thursday she had just opened Wishnatsky's letter and had no comment on it yet.

Last summer, Rovner wrote a letter to the Herald explaining why the law school should be involved in the Fargo case.

"One need not be an atheist to believe that it is inappropriate for government to make adherence to religion relevant in any way to a person's standing in the political community," she wrote.

Wishnatsky's connecting of the Themis statue to the Ten Commandments issue doesn't come out of the blue.

Conservative Christian activists who support Alabama Chief Justice Roy Moore in his unsuccessful attempt this year to keep a display of the Ten Commandments at the state courthouse where he presides in Montgomery have made the same connection. They say, on Web sites, that it's ironic that

for an opinion from Attorney General Wayne Stenehjem on whether it was legal for the law school's faculty and staff to assist in the Fargo case. Stenehjem ruled the law school was within its rights to take on the case.

Always earnest in his activism, Wishnatsky also seems to be tweaking UND officials in his letter.

"Unfortunately, I do not possess the expertise properly to research the pagan religious origins of the Themis statue and to present the facts demonstrating its roots in heathen worship," he wrote Rovner. "I request the assistance of the clinical education program in developing a lawsuit on the same basis as that granted to the atheistic North Dakota State University professors to bring suit against the city of Fargo over the Ten Commandments monument."

Rovner said Thursday she had just opened Wishnatsky's letter and had no comment on it yet.

Last summer, Rovner wrote a letter to the Herald explaining why the law school should be involved in the Fargo case.

"One need not be an atheist to believe that it is inappropriate for government to make adherence to religion relevant in any way to a person's standing in the political community," she wrote.

Wishnatsky's connecting of the Themis statue to the Ten Commandments issue doesn't come out of the blue.

Conservative Christian activists who support Alabama Chief Justice Roy Moore in his unsuccessful attempt this year to keep a display of the Ten Commandments at the state courthouse where he presides in Montgomery have made the same connection. They say, on Web sites, that it's ironic that the same Alabama state courthouse contains a representation of Themis.

Reach Lee at (701) 780-1237, or (800) 477-6572, ext. 237; e-mail [slee@gfherald.com](mailto:slee@gfherald.com)

## House passe

Associated Press

WASHINGTON — The House, putting aside questions about the mission in Iraq, gave strong endorsement early today to a \$87.5 billion package to sustain U.S. military forces and rebuild the shattered nations of Iraq and Afghanistan.

"Congress stood with the president and our soldiers tonight, sending them the support they need to defend our nation and all those working to advance freedom abroad," said Rep. Roy Blunt, R-Mo.

The package, approved 298-121 shortly after midnight, includes nearly \$65 billion for military personnel and operations in Iraq and Afghanistan, and an additional \$18.6 billion for reconstruction efforts in Iraq.

The Senate is expected to follow suit quickly, sending President Bush a package that closely mirrors his original request.

House-Senate negotiators worked out the final details of the package Wednesday night, eliminating a Senate provision that would have required that half of the money for Iraqi re-

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# LOCAL

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Saturday,  
Nov. 1, 2003

**HEAVENLY TIME**

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For more information, call your doctor or Altru's Hearing Center, 780-2446, or visit [www.altru.org](http://www.altru.org)

## GRAND FORKS COUNTY COURTHOUSE STATUE

# Law school to treat case like any other

■ Fargo man asks UND for help in suing county over Themis

**By Lisa Davis**  
Herald Staff Writer

The UND Law School will treat the request to represent a Fargo Christian activist in his complaint against a Grand Forks statue like any other potential case.

Martin Wisnatsky said he wants to sue Grand Forks County and other relevant parties to get the Themis statue removed from the top of the Grand Forks County Courthouse.

Director of clinical education at the UND Law School Laura Rovner received a letter from Wisnatsky dated Oct. 29 requesting the assistance.

### No word yet

Wisnatsky said Friday he had not heard back from the UND Law School. Rovner said she would not comment on the letter, but she did say she would treat the request as she would any other request for assistance.

Themis was the ancient Greek goddess of law and order and traditionally has been a symbol at U.S. courthouses, with her eyes blindfolded and holding the scales of justice.

Her statue has perched atop the Grand Forks County courthouse for

nearly 90 years. It was removed for repairs last year and reinstalled this spring.

In the letter to Rovner, Wisnatsky explained why he hoped for help from the clinical education program. He provided a copy of the letter to the Herald.

"I request the assistance of the clinical education program in developing a lawsuit on the basis as that granted to the atheistic North Dakota State University professors to bring suit again the city of Fargo over the Ten Commandments monument," he wrote. Rovner.

Wisnatsky has been a public supporter of the Fargo Ten Commandments display.

Rovner heads the new program at UND's Law School, the Civil Rights and Disabilities Project, which has taken on as clients the opponents of the Fargo Ten Commandments display. The opponents say the display is an unconstitutional establishment of religion.

Davis is a general assignment reporter. Reach her at (701) 780-1105, (800) 477-6572 ext. 105 or [ldavis@bhe-rald.com](mailto:ldavis@bhe-rald.com).

# A day in Dave's Store

■ The  
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have a diverse

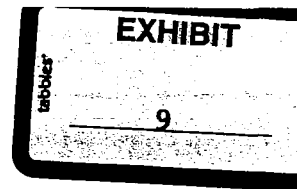
MINNESOTA  
House  
speaker  
says he'll  
back new



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226



**LETTER OPINION  
2003-L-42**

September 26, 2003

Honorable Jim Kasper  
State Representative  
1128 Westrac Drive  
Fargo, ND 58103-2342

Dear Representative Kasper:

Thank you for your letter asking whether students<sup>1</sup> and faculty of a legal clinic at the University of North Dakota School of Law may lawfully represent individuals having claims against the state or its political subdivisions.

As part of its Clinical Education Program, the University of North Dakota School of Law operates a legal clinic. The Clinical Education Program consists of a civil rights project and civil litigation project, and is an integral part of the School of Law's legal education program. In fact, to be accredited by the American Bar Association (ABA), a law school must offer in its program "live-client or other real-life practice experiences. This might be accomplished through clinics or externships." A.B.A. Standard 302(c)(2). The legal clinic helps fulfill this requirement. The School of Law also offers externships.

Like a law firm, the legal clinic represents individuals. A suit commenced by the legal clinic on behalf of an individual is a suit by the individual, not the legal clinic. Thus, when the legal clinic represents an individual in a lawsuit against the state or a political subdivision, it is a lawsuit between the individual and the state or political subdivision, not the University of North Dakota and the state or political subdivision.<sup>2</sup> Furthermore, the legal clinic's

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<sup>1</sup> The Rule on Limited Practice of Law by Law Students provides eligibility and supervision requirements for law students to participate in some activities involving the practice law.

<sup>2</sup> There is no constitutional or statutory prohibition forbidding a state agency or political subdivision from suing another state agency or political subdivision. For example, counties, cities and townships have the right to sue in their own name. N.D.C.C. §§ 11-10-01, 40-01-02, and 58-03-01. Generally across the nation, state agencies and political subdivisions have the right to sue one another in vindication of their legal rights and interests. 11 A.L.R. 5th 630, § 2 (1993).

representation of the client does not constitute the state or University's position on the underlying subject matter. N.D. R. Prof. Conduct 1.2(b) ("A lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

The State Board of Higher Education was created in the Constitution, N.D. Const. art. VIII, § 6, and is charged with the control and administration of state educational institutions, including the University of North Dakota. Id.; see also N.D.C.C. ch. 15-11. The powers granted by the Constitution to the State Board of Higher Education over state educational institutions such as the University of North Dakota are extensive:

The said state board of higher education shall have full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, the state board of higher education shall have the power to delegate to its employees details of the administration of the institutions under its control. The said state board of higher education shall have full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration of said state educational institutions.

N.D. Const. art. VIII, § 6(6)(b). These provisions are self-executing, and are "effective without the necessity of legislative action." N.D. Const. art. VIII, § 8.

The State Board of Higher Education has chosen to provide for a School of Law at the University of North Dakota. Within the School of Law, a legal clinic has been established for the purpose of educating law students and giving them experience with the practical aspects of a legal practice, including representation of actual clients. The ABA Committee on Ethics and Professional Responsibility, in an opinion on "Limitations on the Operation of a Legal Clinic by a College of Law," stated that governing bodies of state law school legal clinics should seek to avoid making rules "that prohibit acceptance of controversial clients and cases or that prohibit acceptance of cases aligning the legal aid clinic against public officials, government agencies or influential members of the community." ABA Informal Op. 1208, Feb. 9, 1972. Further, the North Dakota Rules of Professional Conduct support the principle that controversial or unpopular clients should not be denied legal representation. N.D. R. Prof. Conduct 1.2, comment. In determining the type of cases to handle, the legal clinic has not elected to decline cases against the state or its political subdivisions. I have not found anything in the North Dakota Constitution or laws that would require the clinic to decline such cases.

Therefore, it is my opinion that the State Board of Higher Education is acting within the scope of its constitutional authority by providing a legal clinic at the University of North

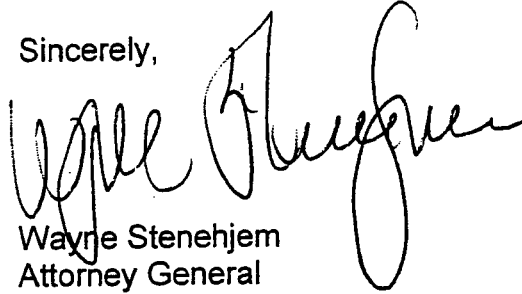
LETTER OPINION 2003-L-42

September 26, 2003

Page 3

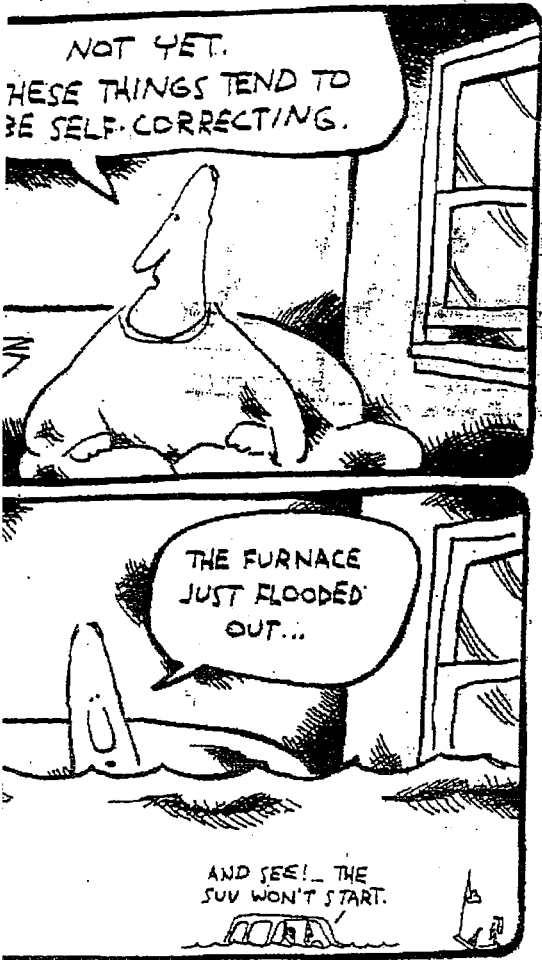
Dakota School of Law and permitting students and faculty of the legal clinic to represent individuals having claims against the state or its political subdivisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Stenehjem", written over the typed name.

Wayne Stenehjem  
Attorney General

eee/vkk



# AG

## Is reversal ssive policies

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lems are uncovered. In other cases the women developed complications late in the pregnancy that threatened their lives. The mothers were devastated and faced a terrible decision with no easy solutions.

This information does not in any way resolve the pro-choice vs. pro-life controversy, but the news media's failure to provide the information does lead people to think there are a bunch of sadistic doctors and heartless women doing a difficult surgical procedure for frivolous reasons.

**Edward Halas**

Don't drink alcohol

### VIEWPOINT

## If the Fargo monument goes, Themis goes, too

By Martin Wishnatsky

FARGO — As a follow-up to the article in the Oct. 31 Herald, "Goddess Gotcha" (Page 1A), I would like to explain more fully my proposed lawsuit against the Themis statue on the Grand Forks County Courthouse and my request for representation by the UND Law School Clinical Education Program.

All five plaintiffs in the lawsuit against the city of Fargo for removal of the Ten Commandments monument on the city lawn are present or former faculty at North Dakota State University. Lead Plaintiff Wesley Twombly is an extrusion specialist at the Northern Crops Institute. The other four plaintiffs are present or former NDSU faculty members in the following fields: Davis Cope (mathematics), Jon Lindgren (economics), William Treumann (chemistry) and Lewis Lubka (planning).

So we have the unseemly picture of a UND Law School associate professor, Laura Rovner, directing the program that is representing five other current or former state university professors — and all at taxpayer expense. It seems to me that state university professors have ample income, pension benefits and so on from the taxpayers so as not to need further taxpayer assistance in bringing a lawsuit attacking the religious heritage of many.

The suspicion therefore arises that Rovner is abusing her position as head of the Clinical Education Program at UND to further her own political agenda. The ungodliness of Bill Clinton is well known. Less well-known is that Rovner signed a petition sent to Congress by law school professors arguing against Clinton's impeachment by the U.S. House of Representatives. The petition may be seen online at a University of Pittsburgh Law School Web site, <http://jurist.law.pitt.edu/pefit1.htm>.

For the state government via its law school to call the Ten Commandments lawsuit "education" seems far from the mark. As the Herald stated in an editorial, it smacks of "indoctrination," especially in light of Rovner's statement applauding the "courage" of these atheistic professors in asserting their "religious freedom" ("Thou shalt not take on such cases," editorial, Page 1D, Aug. 31).

The same standard should apply to pagan expressions of religion in the public square. As a Christian I am profoundly offended by the erection of a statue of a Greek goddess on the pinnacle of the courthouse, supposedly to represent ideals of justice. According to the Bible, justice is an expression of the righteousness of God the Father, as expressed in the Ten Commandments, and mediated by the mercy of Jesus Christ.

As a Christian I do not recognize non-Biblical standards of justice as having any basis in ultimate reality. Themis is not a historical personage, either of American national history or that of North Dakota. She is a "goddess," namely a religious figure from pagan Greece and Rome.

It offends me that on the one hand the state law school is seeking to eradicate the evidence of our Biblical heritage from the lawn in front of Fargo City Hall while the expression of pagan "justice" sits unchallenged atop the county courthouse in Grand Forks.

If we are to cleanse representations of the Christian faith from the public square in North Dakota, let us also at the same time sweep the debris of paganism from our courthouses.

If the UND Law School is willing deeply to offend Christians in the name of "education," then let us serve the same stew to the pagans. Themis must go.

*Wishnatsky is a prolife and Christian activist in Fargo.*

### SOUND OFF!

- Write the Grand Forks Herald, Box 6008, Grand Forks ND 58206-6008.
- Call Opinion Editor Tom Dennis at (701) 780-1276.
- Fax us at (701) 795-4604.
- Send e-mail to [letters@gherald.com](mailto:letters@gherald.com).
- You must leave your name, an address and a daytime phone number. We won't publish material without verifying it.
- Letters with fewer than 250 words are p... spelling and edit letters as Herald ed...

**EXHIBIT**

November 12, 2003

Martin Wishnatsky  
P.O. Box 413  
Fargo, North Dakota 58107

SCHOOL OF LAW  
CLINICAL EDUCATION PROGRAM  
Civil Litigation Project  
Civil Rights Project  
P.O. BOX 9003  
GRAND FORKS, NORTH DAKOTA 58202-9003  
(701) 777-2932  
FAX (701) 777-6301

Dear Mr. Wishnatsky:

Thank you for your October 29, 2003 inquiry regarding legal representation. Determination of eligibility for legal assistance is made by the Clinical Education Program based upon internal guidelines established by the Program, which take into account our resources, our current caseload and an applicant's ability to secure legal representation elsewhere. In the normal course of assessing applications for representation, the Clinic first requires prospective clients to demonstrate that they meet the Clinic's eligibility criteria for representation, that is, that they have been unable to secure legal assistance elsewhere. We have not asked you to provide such information because, due to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time.

Moreover, even if the lack of resources did not preclude the Clinic from representing you, our ethical obligations under the North Dakota Rules of Professional Conduct would prohibit us from doing so. Our independent, professional judgment is that your persistent and antagonistic actions against the Clinical Education Program and faculty involved would adversely affect our ability to establish an effective client-attorney relationship with you and would consequently impair our ability to provide legal representation to you. Therefore, issues of resources notwithstanding, our ethical obligations require us to decline your request for representation.

We wish you success in finding a resolution to your concerns.

Very truly yours,



The Clinical Education Program  
by Laura L. Rovner, Director

EXHIBIT

11

# Clinic's refusal to take Themis case shows a double standard

By Martin Wishnatsky

FARGO — I have received a letter from Laura Rovner, director of the Clinical Education Program at UND Law School, declining to represent me in challenging the Themis statue on the Grand Forks County Courthouse ("Goddess gotcha," Page 1A, Oct. 31).

The primary reason is that "due to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time."

If resources are so tight, where was the urgency to take a case in Fargo over a monument which had rested undisturbed on the City Hall lawn for 40 years without prompting any litigation? Jon Lindgren, one of the plaintiffs in that case, walked past the monument on a daily basis for the 16 years he was mayor (1978-1994) without ever being sufficiently distressed to bring suit. Is it not curious that the UND Law School's involvement in the matter parallels an American Civil Liberties Union campaign against Ten Commandments monuments nationwide?

The matter becomes even more curious when Rovner further explains that representation

by the Civil Rights Project is limited to those who "have been unable to secure legal assistance elsewhere."

Until a year ago, Jon Lindgren was president and board member of the ACLU of the Dakotas. Is it credible that he was "unable to secure legal assistance" in furtherance of a primary objective of his own organization?

The only conclusion a reasonable mind can reach is that Rovner has hijacked the resources of the UND Law School to further the agenda of the ACLU, sparing them the expense and placing it upon the taxpayers of North Dakota. Her program at the law school is available to attack representations of Christian morality, but is too pressed for time to take on similar symbols of pagan origin.

Rovner further explains that even if there was time, she would decline the case because "our ethical obligations under the North Dakota Rules of Professional Conduct would prohibit us from doing so." What are these ethical obligations? Rovner contends that because I have criticized the program for representing the NDSU atheists ("your persistent and antagonistic actions"), she could not establish "an effective client-attorney relationship."

Rule 1.16 of the North Dakota

Rules of Professional Conduct states four circumstances under which an attorney "shall not represent a client." The only one that is remotely relevant to the current situation is: "(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

I find it hard to believe that the controversy over Rovner's representation of the NDSU professors has so affected her "mental condition" that she is compelled as a matter of professional ethics to decline representation in a parallel case. If her sensibilities are so delicate, perhaps she is not qualified for the rough-and-tumble of the litigation world and should resign her position as clinical education director in favor of someone with greater mental resiliency.

She certainly suffers no disqualifying mental anguish when attacking the sensibilities of Christians. Perhaps it's only when they in turn request a free lawyer at state expense that she experiences disabling mental distress.

It is time to end this sham and have the State Board of Higher Education request the ACLU to fund its own litigation in this state.

*Wishnatsky is a pro-life and Christian activist in Fargo.*

## MAILBAG

### Exercise your rights, and wind up on an FBI list

GRAND FORKS — When the handful of antiwar activists were gathering in Grand Forks to protest as President Bush was launching this major debacle in Iraq, we were reminded by his supporters that our troops are protecting the right of Americans to engage in such protests.

The Nov. 23 New York Times reports that the FBI has col-

lected extensive information on the antiwar movement and has ordered local law enforcement officials to report any suspicious activity related to war protests. I think we need more war protesters here and far fewer local National Guard members in Iraq.

As a former member of the National Guard, I don't accept the spin local media put on the de-

ployments there. Most National Guard members here sign up because they need the money or want to defer or pay off student debts.

Let's have the hard news about the war on the front page where it belongs. Maybe more people will realize what a stupid, immoral and wasteful war this is.

*Richard Shafer*

The spirit bubbling around years ago in Michael's Church for its sixth anniversary. ... The \$1,826 in profit bazaar, according to Torkelson. ... I ity raised \$50 Anchor Splash ... A surge of old Santa Claus of its goal for n

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Herb Bro pher hockey expecting a Forks. He to itor Virgil F in February phers won c to move in

EXHIBIT





Winner of the Pulitzer Prize for Public Service

NEWSSTAND PRICE 50 CENTS

Year 124, Issue 156 (C) 2003

12/2/03

## Justice for all?

■ Christian activist says an eye for an eye, and goddess Themis should fall

By Stephen J. Lee  
Herald Staff Writer

Martin Wishnatsky, the Fargo Christian activist defending the Ten Commandments monument on Fargo's City Hall mall, plans to ask the Grand Forks County Commission today to remove the statue of Themis from atop the county's courthouse.

It's part of Wishnatsky's effort to link the two issues and criticize UND law school's Clinical Education Program, which is representing several plaintiffs seeking to have Fargo's Ten Commandments monument removed from public property.

Laura Rovner heads the Clinical Education Program at UND's law school that includes a Civil Rights Project that has taken on the Ten Commandments case pro bono.

In October, Wishnatsky asked Rovner to similarly represent him in his effort to remove the Themis statue on the same grounds: as a pagan goddess, she is a religious symbol.

Rovner confirmed Monday she had sent Wishnatsky a letter declining to represent him, but said she would not comment on his request or the work of the Clinical Education Program.

In her letter to Wishnatsky, Rovner said the Clinical Education Program normally requires that prospective clients to demonstrate "that they have been unable to secure legal assistance elsewhere."

THEMIS: See Page 5A

Registered sex offender  
Alfonso Rodriguez Jr. charged  
with kidnapping in connection  
with Dru Sjodin disappearance

# Arrest suspect



John Stegnes, staff photographer

▲ Alfonso Rodriguez Jr. was arrested Monday evening at his mother's Crookston home at 210 Adams St. He was living with his mother since his release from prison in May.

## Day by day

### The Sjodin case

A timeline of events surrounding the disappearance and possible abduction of 11-year-old UND student Dru Sjodin originally of Pequot Lakes, Minn.

## Neighborhood surprised despite

IRAQ

Fi

EXHIBIT

13

## THEMIS/

Continued from Page 1A

But that criterion wasn't even at issue in Wishnatsky's request, Rovner wrote, because, "due to the high demand for our legal services coupled with our current caseload and limited resources, the Civil Rights Project is unable to accept any new cases at this time."

But Rovner explained there were further reasons for not taking on his case.

"Our independent, professional judgment is that your persistent and antagonistic actions against the Clinical Education Program and faculty involved would adversely affect our ability to establish an effective client-attorney relationship with you and would consequently impair our ability to provide legal representation to you. Therefore, issues of re-

sources notwithstanding, our ethical obligations require us to decline your request for representation," Rovner wrote in a letter dated Nov. 12.

Wishnatsky provided the Herald with a copy of the letter and submitted his own letter to the editor in response.

"If resources are so tight, where was the urgency to take a case in Fargo over a monument which had rested undisturbed on the City Hall lawn for 40 years without prompting any litigation," Wishnatsky wrote.

"The only conclusion a reasoning mind can reach is that Rovner has hijacked the resources of the UND law school to further the agenda of the ACLU, sparing them the expense and placing it upon the taxpayers of North Dakota," Wishnatsky wrote. "Her program at the law school is available to attack representations of Christian morality, but is too pressed for time to take on similar symbols of pagan origin."

He's going to ask the county commission to take down the statue as a way of making a point about his views on the Ten Commandments monument on public property in Fargo, Wishnatsky said Monday in an interview.

"I would say, how you handle one, you should handle the other the same way. If the courts decide the Ten Commandments have to go, then the same logic would require that the Themis statue has to go, also." The Themis statue has been on top there seven decades and last spring was removed for fixing, then replaced.

Wishnatsky has been active for a decade in Fargo opposing abortion and more recently in the debate over the granite monument carved with the Ten Commandments that has sat on Fargo's City Hall mall for about 40 years.

Reach Lee at (701) 780-1237, or (800) 477-6572, ext. 237; e-mail [slee@gfherald.com](mailto:slee@gfherald.com)

## IRAQ/

Continued from Page 1A

fashion," said Col. Frederick Rudesheim, who commands U.S. military operations in the city.

The attackers appeared to know the precise routes of both convoys, planting gunmen on rooftops and alleyways along the way. They also had positioned armed groups of 30 to 40 fighters at the banks and other ambush points. They erected a makeshift barricade to block one of the convoys.

Others were dispatched with Kalashnikov rifles and rocket-propelled grenades in cars to chase and attack U.S. troops, said U.S. military officials.

The guerrillas used mortars and roadside bombs in addition to small arms and rocket-propelled grenades.

The attack, however, failed, despite its scale and high level of coordination. U.S. troops returned fire with small arms, 120 mm tank rounds and 25 mm canon fire from Bradley fighting vehicles, said U.S. military officials.

Iraqis in the town say the

than reported by the U.S. military, although they also complained that the U.S. response was excessive.

At the main hospital, Iraqi officials said there were eight dead, including an Iraqi woman and a 73-year-old Iranian man. Among the 55 injured, they said, were elderly men, two women and at least 10 children.

"All the people injured and killed were innocent people," said Said Hassan Ali al Janabi, an information officer for the Samarra hospital.

U.S. officials said all the casualties were guerrillas. There were 18 wounded and 11 captured. Five U.S. soldiers received nonlife-threatening injuries.

"We understand there is a discrepancy," said Maj. Gordon Tate, a spokesman for the Army's 4th Infantry Division. "We're confident of our assessment."

He said that individual commanders had counted the bodies of the guerrillas on the streets. Their bodies, he said, were likely recovered and buried quickly according to Muslim tradition. He added that he had no information on

At the hospital, they included a 7-year-old boy named Ali Abdullah Amin who was lying on a bed with a blood-stained bandage on his leg. He was walking with his father and older brother into a nearby mosque for the traditional sunset prayer when one of the many firefights broke out, relatives said.

His father was killed instantly, his brother seriously injured.

"I'm feeling pain," Ali moaned, his face contorting. "My leg hurts me."

The battle's imprint was visible everywhere Monday. Outside the mosque where Ali's father was killed, patches of dried blood scarred the muddy ground. Nearby were three bloody footprints, apparently of someone trying to escape.

A mangled white Nissan bus and five other charred cars that had been shelled were outside the hospital. "Down USA" was scrawled on the window of the bus.

Not a single U.S. soldier was seen on the streets of Samarra on Monday. Around the city, fresh slogans were scrawled on walls.

show up at Ralph Engelstad Arena in Grand Forks, Minn.

search for evidence and speak to

Forks police assist UND officials in

ier Duane Szabo, who said he had no case file official complaint and had no interviews of family members. Szabo said the case is not on file as a criminal case and evidence is not in the

public. Szabo's colleague, Steve Olson, who said he had no case file, said he had no interviews of family members. Szabo said the case is not on file as a criminal case and evidence is not in the

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Water Grand Forks

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just knew that somebody was staking out over there."

Stay-at-home mother Cardinal said she is pleased to see Rodriguez off the streets.

"I'm home all day and all night with the kids," she said. "Just knowing that threat is gone is a relief."

About 10 p.m. Monday, Alisa Cardinal said, satellite trucks and vans from news sources were parked outside her home.

She said a niece and nephew of Rodriguez would come to the Rodriguez home after school to play.

Alfonso Rodriguez has been living in the home since about May, Alisa Cardinal said.

"You never saw him unless he was mowing the lawn or trimming the plants in front," he said. "You never saw him

IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law,  
School of Law, in her  
individual and official capacity,

Defendant.

**AFFIDAVIT OF  
MARGARET MOORE JACKSON**

**Civil Case No. A2-04-1**

.....  
Margaret Moore Jackson, being first duly sworn upon oath, deposes and states as follows:

1. In June, 2003, I started working as a Visiting Assistant Professor of Law at the University of North Dakota School of Law. At that time I took over the Civil Litigation Project in the Clinical Education Program. I will begin a permanent, tenure-track position at the University of North Dakota School of Law on July 1, 2004.

2. The Civil Litigation Project represents clients who have been unable to secure representation elsewhere in civil cases involving housing, employment, consumer rights and family law matters, among others. The Civil Rights Project, which Laura Rovner directs, provides legal services to clients who have been unable to secure representation elsewhere in matters involving civil rights and civil liberties.

3. As the Director of the Civil Litigation Project, I locate prospective clients for the Project docket, assign students to represent these clients, and closely supervise all aspects of their handling of these cases. In conjunction with Professor Rovner, I also plan the course syllabus each semester, assign reading materials, and teach the

classroom component. In addition, I evaluate student casework, class participation, and written assignments. I am also responsible for serving on committees and for meeting the same scholarship requirements as other law school faculty.

4. In or about November 2003, the Clinic received a request for representation from Martin Wishnatsky. Professor Rovner and I discussed Mr. Wishnatsky's request. Professor Rovner filled me in on her contacts with Mr. Wishnatsky, including the fact that he had exhibited a hostile attitude toward her, published false statements about the Clinic's use of LAND money, and publicly denigrated the Clinic's clients for pursuing their First Amendment claims through the courts.

5. There was never any question about whether to take Mr. Wishnatsky's case because Professor Rovner was not able to take any more cases at the time the letter came in. As a civil rights case, the case fell within the area of the Civil Rights Project. The Civil Litigation Project, however, also was not taking any new cases at that time. Professor Rovner and I had each turned away a number of persons who sought legal assistance that semester because the students were already busy enough.

6. Generally, in deciding whether to take a case when we have room for another one, we discuss the educational opportunities the case is expected to provide. But this only occurs if Professor Rovner or I determine that our project is able to take on another case at that time.

7. With regard to Mr. Wishnatsky's request, I did not research his potential legal theories or whether they had any merit. Professor Rovner and I mentioned the fact that neither one of us knew off the top of our heads whether or not his proposed claim could be legally supported. It seemed doubtful for many reasons. I was interested in these questions, but had no time to do any research to satisfy my curiosity.

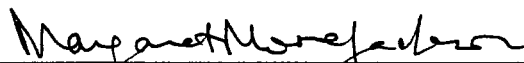
8. It also concerned me that, if the Civil Rights Project had been able to take on another case at that time, it might not make sense to take on another First Amendment/Establishment Clause claim, since we already had one with presumably the same legal issues at stake.

9. In our discussion regarding his request, Professor Rovner noted that, given Mr. Wishnatsky's history at litigating his own cases, he did not fit our criteria for representation – which is meant to be limited to persons who otherwise would not be able to take their claims to court. Even the letter from Wishnatsky itself did not indicate that he needed legal representation, but that he needed help researching the facts concerning the religious origins of the Themis statue. We decline all requests for mere fact-finding, research, and other “assistance” with lawsuits as not being an adequate educational experience for the students.

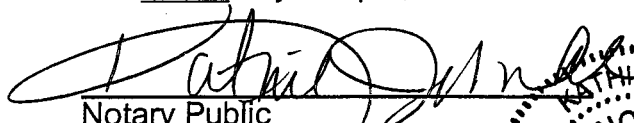
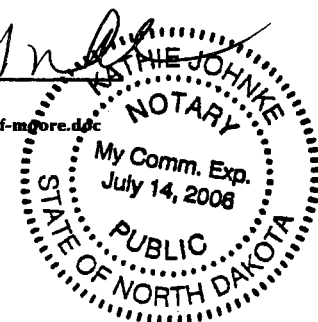
10. Professor Rovner and I also discussed the possibility that this letter from Mr. Wishnatsky might be solely a set-up for a lawsuit against Professor Rovner, the Clinic, and/or the University. Given Mr. Wishnatsky's stance toward Professor Rovner and the Clinic, the letter seemed like a sham, not a genuine request for representation. We decided that, rather than raise that issue or the other many reasons we could think of that would preclude us from representing Mr. Wishnatsky on this matter, Professor Rovner would just send Mr. Wishnatsky a letter explaining that we were unable to represent him because of lack of resources. However, because we wanted to avoid a situation where Mr. Wishnatsky would simply continue to barrage the Clinic with requests for representation throughout the school year, the letter also noted that conflict of interest issues would preclude Professor Rovner or the Clinic from representing Mr. Wishnatsky even if the Clinic was able to take on another case.

11. The Clinic is an educational program. The students who sign up to take one of the four courses the Clinic offers vary from semester to semester. It is impossible to predict what will happen in any of the cases we manage, including when the students will be able to take on another case. For this reason, and because doing so could harm the claims of persons seeking legal representation, we do not maintain any sort of "waiting list."

Dated this 14<sup>th</sup> day of April, 2004.

  
Margaret Moore Jackson

Subscribed and sworn to before me  
this 14<sup>th</sup> day of April, 2004.

  
Notary Public  
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IN UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA

Martin Wishnatsky,

Plaintiff,

v.

Laura Rovner, Director;  
Clinical Education Program,  
University of North Dakota,  
School of Law, in her  
individual and official capacity,

Defendant.

**AFFIDAVIT OF SERVICE BY MAIL**

**Civil Case No. A2-04-1**

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

ss.

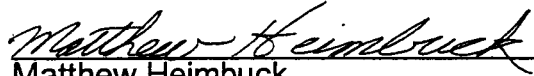
Matthew Heim buck states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 29<sup>th</sup> day of March, 2004, I served the following Motion for Judgment on the Pleadings, Brief in Support of Motion for Judgment on the Pleadings, and Statement of Undisputed Material Facts, upon Martin Wishnatsky by placing a true and correct copy thereof in an envelope addressed as follows:

Martin Wishnatsky  
PO Box 413  
Fargo, ND 58107

and depositing the same, with postage prepaid, in the United States mail at Bismarck,  
North Dakota.

  
Matthew Heimbeck

Subscribed and sworn to before me  
this 27<sup>th</sup> day of March, 2004.

  
Notary Public

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JOLENE J. THIEL  
Notary Public, State of North Dakota  
My Commission Expires APRIL 5, 2005  
STATE OF NORTH DAKOTA  
NOTARY PUBLIC SEAL



