

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2396

2001 SENATE JUDICIARY

SB 2396

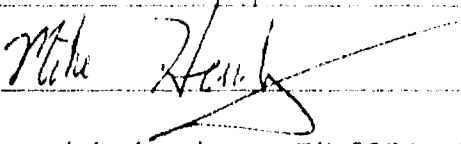
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2396

Senate Judiciary Committee

Conference Committee

Hearing Date February 5th, 2001

Tape Number	Side A	Side B	Meter #
1		x	49-end
2	x		0-15
3	x		10 -- 24. 0
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2396: A BILL FOR AN ACT TO REPEAL SECTIONS 27-13-05, AND 27-13-07 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO AN ATTORNEY'S REFUSAL TO DELIVER A CLIENT'S MONEY OR PROPERTY AND THE FURNISHING OF A BOND.

Christina Hogan, representing the State Bar Association of North Dakota, testifies in favor of SB 2396. (testimony attached)

Senator Traynor, that would be a refusal to deliver clients money and property. Are we repealling this law? What is the status of these rules?

Christina Hogan, we have rules that apply to the situation which makes these unethical. Disbarment could be the penalty.

Senator Traynor, are there appropriate criminal statutes that apply?

Christina Hogan, yes.

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Senate Judiciary Committee
Bill/Resolution Number SB 2396
Hearing Date February 5th, 2001

Senator Trenbeath, one horrible thought is that when we settle account, we cut checks from clients and ourselves. Now are we giving all the money to the client and hope that they pay us?

Christina Hogan, that isn't the issue. A lawyer is entitled to get paid.

Senator Traynor, public is still protected if we pass this bill?

Christina Hogan, better protected.

Senator Traynor, rules would be more extensive because this deals with disbarment. He then closed the hearing on SB 2396.

**SENATOR WATNE MOTIONED TO DO PASS, SECONDED BY SENATOR DEVER.
VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR
WATNE VOLUNTEERED TO CARRY THE BILL.**

Date: 2/6
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2396

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Watne Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.		
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Watne

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 8, 2001 1:20 p.m.

Module No: SR-23-2732
Carrier: Watne
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2396: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2396 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2396

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2396

House Judiciary Committee

Conference Committee

Hearing Date 03-12-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	481 to 734
TAPE I		x	2529 to 2998
Committee Clerk Signature <i>Sharon DeKrey</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2396. Relating to an attorney's refusal to deliver a client's money or property and the furnishing of a bond.

Christine Hogan: Executive Director of the State Bar Association of North Dakota. (see attached testimony).

Chairman DeKrey: Are there any questions, if none, thank you for appearing before the committee. Is there anyone else wishing to appear in support, opposition or neutral. Seeing none we will close the hearing on SB 2396.

COMMITTEE ACTION

Chairman DeKrey called the committee to order on SB 2396. What are the wishes of the committee. Vice Chr Kretschmar moved a DO PASS seconded by Rep Mahoney. The clerk will call the roll on SB 2396. The motion passes with 13 YES, 0 NO and 2 ABSENT. Vice Chr Kretschmar is the carrier.

Date: 03-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2394

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Vice Ch. Kretschmar Seconded By Rep Mahoney

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Vice Ch. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 12, 2001 12:25 p.m.

Module No: HR-42-5330
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2396: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2396 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2396

Testimony before the Senate Judiciary Committee
Regarding Senate Bill 2396
February 5, 2001
By Christine Hogan
State Bar Association of North Dakota

Chairman Traynor and members of the Committee, my name is Christine Hogan. I am the Executive Director of the State Bar Association of North Dakota. I am here to speak in favor of Senate Bill 2396. Senator Holmberg introduced this bill at the request of the Board of Governors of the State Bar Association of North Dakota.

The Association is requesting that the statutes allowing attorneys to assert a lien on a client's files be repealed. Repeal of the statutes is necessary because it has been held unethical in this state for lawyers to withhold client files on the condition that copying charges be paid.

In the past, there have been complaints that lawyers did not return files to clients or that lawyers charged excessively for providing copies of a file after the lawyer's services were terminated by the client.

The Joint Attorney Standards Committee, which is made up of lawyers and lay people appointed by the Supreme Court and by the State Bar Association of North Dakota, studied the issue of client access to files. The Committee determined that it is not appropriate for a lawyer to assert a retaining lien against a client's files, papers, or property. The Committee developed a new draft rule of professional conduct to address the issue. The proposed rule change is currently pending consideration by the North Dakota Supreme Court. As an accompaniment to the rule change, the Committee

also recommended that the following current statutes, which do allow a retaining lien against a client's files, ought to be repealed:

1. 27-13-05 NDCC (Attorney's refusal to deliver client's money or property – Penalty)
2. 27-13-06 NDCC (Attorney's withholding of client's money or property under alleged lien unlawful if bond furnished.)
3. 27-13-07 NDCC (Attorney's refusal to deliver client's money or property not unlawful if he furnishes a bond.)

It is necessary to repeal these three statutes because, if they remain on the books, the statutes could cause confusion for lawyers. These statutes purport to *allow* attorneys to assert retaining liens, but this very conduct has been held to be *unethical* by the Ethics Committee of the State Bar Association of North Dakota and the disciplinary counsel of the North Dakota Supreme Court.

Thus, in order to bring the Century Code into compliance with current ethical decisions and with the proposed new rules of the professional conduct. The State Bar Association of North Dakota is recommending that Senate Bill 2396 be passed.

Thank you.



State Bar Association of North Dakota

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Executive Director

Christine A. Hogan

February 5, 2001

Senator Jack Traynor
Chairman, Judiciary Committee
North Dakota Senate

Dear Senator Traynor:

At your request, I am providing the following background materials for the Senate Judiciary Committee's consideration of Senate Bill 2396 regarding the repeal of the attorney retaining lien statutes:

1. Copies of §§ 27-13-05 through 27-13-07 N.D.C.C.;
2. N.D. Supreme Court opinion in *Disciplinary Board v. Anseth*, 562 N.W.2d 385 (N.D. 1997);
3. Excerpts from the Joint Attorney Standards Committee's report to the Supreme Court on the issues relating to client access to files and circumstances under which a lawyer may charge a client for providing copies of a file to the client;
4. The Attorney Standards Committee's proposed new *Rule 1.19* of the Rules of Professional Conduct.;
5. Conforming amendments to the *comment* to current *Rule 1.6* of the Rules of Professional Conduct to reflect the lawyer's ability to make copies of a client file for the lawyer's own purposes, subject to limitations imposed under new *Rule 1.19*;
6. Conforming amendments to the *comment* and to *paragraph (e) of Rule 1.16*. This proposed amendment to paragraph (e) replaces the general references to "other law" with a reference to new *Rule 1.19* in describing the authorization for lawyer retention of client papers. The *comment* is amended to delete language regarding retention of a file as security for a fee, which is no longer applicable in light of the new *Rule 1.19*;

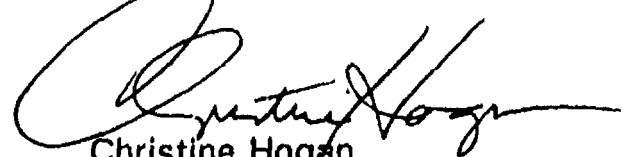
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7. Memorandum from Vivian Berg addressing the lawyer's ethical duty to turn over files as requested by a client when the representation is terminated; and

8. Ethical opinions from other states.

Thank you for the opportunity to assist the committee. Please let me know if you have any further questions.

Very truly yours,



Christine Hogan
Executive Director

cc: Jim Ganje, Court Administrator's Office
North Dakota Supreme Court

ATTACHMENT

1

27-13-05. Attorney's refusal to deliver client's money or property — Penalty. An attorney, except as otherwise provided in sections 27-13-06 and 27-13-07, who receives money or property of his client in the course of his professional business and who refuses to pay or deliver the same to the person entitled thereto within a reasonable time after a demand therefor has been made upon him, is guilty of a class A misdemeanor.

Source: Pol. C. 1877, ch. 18, § 17; R.C. 1895, § 438; R.C. 1899, § 438; R.C. 1905, § 511; C.L. 1913, § 805; R.C. 1943, § 27-1305; S.L. 1975, ch. 106, § 312. courts of the state was revoked and canceled where the attorney was guilty of converting his client's money. In re Garrity (1931) 60 ND 454, 235 NW 343.

Revocation of License.

The license of an attorney to practice in the

