

**ORIGINAL**

IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

20000320

Bonnie Kraft, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 North Dakota State Board )  
 of Nursing, )  
 )  
 Appellee. )

Supreme Court No. 20000320

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

AUG 3 2001

STATE OF NORTH DAKOTA

PETITION FOR REHEARING

Carl O. Flagstad #03389  
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Attorney for Bonnie Kraft

IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

Bonnie Kraft,	)	
	)	
Appellant,	)	
	)	
vs.	)	Supreme Court No. 20000320
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North Dakota State Board	)	
of Nursing,	)	
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The Petitioner, Bonnie Kraft, respectfully requests this Court to consider rehearing pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure. The basis for this request is that Petitioner believes the Court has misapprehended the facts particularly with regard to the Appellee's counsel giving notice to Petitioner or her representative of proceedings of the Board of Nursing as it made its decision.

The Court invited any evidence regarding the purported notice at oral argument and again in its opinion and is aware that such evidence exists in the form of an affidavit of attorney Michael Hoffman. Though it is not a part of the record, it is attached hereto and this Court has already heard the explanation as to why it was not included in the record.

It is Petitioner's contention, however, that the Court need not even rely on or consider the affidavit to grant the relief requested. Rather, the Petitioner submits that the

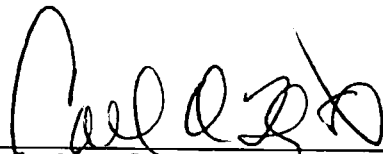
Court reached an erroneous conclusion with respect to Mr Rolfson's affidavit (which the Court refers to as evidence). Nowhere does that affidavit say that he gave notice. Indeed, he could not say that as he had no proof which he admittedly does when he actually gives notice. Every circumstance in the case, individually and collectively admits of no reasonable conclusion other than he did not give notice. Presumably, the facts in this case are the very type of situation which the Rules of Evidence must contemplate. On the one hand Rule 403 indicates that evidence of habit or routine (such as given by Mr Rolfson) is relevant to prove one has acted in conformity with such habit or routine. On the other hand, Rule 803(7) recognizes the obvious, that is, that absence of routinely kept records of a transaction is relevant to prove nonoccurrence or nonexistence of the event sought to be proved. Mr Rolfson's affidavit actually proves he gave no notice. Mr Rolfson had no normally kept records of the notice he claims to routinely give. There is no computer record, no hard copy, no certificate of service - nothing. Even a one person law firm with no secretary has such records available if the event occurred.

The Court indicates the issue of ex parte communication is very important and, indeed, it is, but the analysis of the issue in its opinion does not appear to treat it as important. There is no evidence from which this Court could properly conclude notice was given and isn't the burden of

proof of such notice rightfully on the Board? It ought to be since they are the ones who are charged with conforming their conduct to the requirements of the law.

The significance of this case is obvious. It deals with the very livelihood of an individual. Even the appearance of impropriety, and we suggest there is much more than simply an appearance, ought be sufficient for this Court to grant relief in the interest of justice. Far too often, individuals are seemingly disadvantaged by some unwritten notion or presumption that government and government agencies do no wrong even if that conclusion flies in the face of the evidence before those drawing such conclusion as we suggest occurred in this case.

Respectfully submitted this 3rd day of August, 2001.



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Attorney for Bonnie Kraft



billing reflecting notice of the meeting on March 16, 2000, or any telephone conversation between myself and Ms. Kraft regarding any meeting on March 16, 2000. Also, it is the policy of my office to send to my client any correspondence which comes to me during the course of my representation of that client, and there is no correspondence in my file to Ms. Kraft indicating any meeting on March 16, 2000.

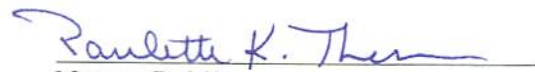
“My recollection in this case is that we did not receive notice of any hearing on March 16, 2000, and my recollection is certainly confirmed by the fact that there is nothing in my file indicating any type of notice of any hearing on March 16, 2000.”

Dated this 20 day of March, 2001.

  
MICHAEL R. HOFFMAN

Subscribed and sworn to before me on this 20 day of March, 2001.

SEAL

  
Notary Public  
Burleigh County, North Dakota  
My Commission Expires: 06-18-03

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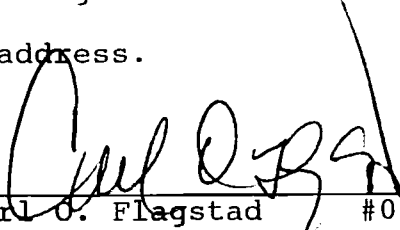
CERTIFICATE OF SERVICE

Supreme Court No. 20000320

The undersigned hereby certifies that on the 3rd day of August, 2001 he served a true and correct copy of the attached PETITION FOR REHEARING on the following:

Calvin N. Rolfson  
Special Ass't. Attorney General  
PO Box 2196  
Bismarck, ND 58502-2196

by placing it in an envelope and depositing it, postage prepaid, in the United States mail at Minot, ND. Regular mail service exists between Minot, ND and point of address.

  
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