CHARLOTTE SCHOOL of LAW

Jason Huber | Assistant Professor of Law | 2145 Suttle Avenue | Charlotte, North Carolina 28208 | jhuber@charlottelaw.edu |704.971.8381 | 704.971.0932 fax | www.charlottelaw.edu

January 18, 2012

SENT VIA FIRST CLASS MAIL
Alice Neece Mine, Esq.
Assistant Executive Director of the North Carolina State Bar
PO Box 25908
Raleigh, North Carolina 27611-5908

Re: Request for Formal Ethics Opinion on the Use of Release-Dismissal Agreements

Dear Ms. Mine:

We write to request that the North Carolina State Bar issue a Formal Ethics Opinion on the use of release-dismissal agreements.

My name is Jason Huber and I am member of the North Carolina State Bar. At the Charlotte School of Law I supervise students who work in the Civil Rights Clinic ("Clinic"). Last year the Clinic investigated a potential civil rights case on behalf of an individual ("Mr. Doe") whose conviction and life sentence (of which he served ten years) was discharged on the state's motion when the alleged victim recanted her statement. Through our investigation, we learned that the prosecutor conditioned dismissal of the conviction upon Mr. Doe signing a release purportedly waiving any civil claims he may have had against any person or entity connected with his arrest, prosecution, and ten-year wrongful confinement. The prosecutor presented this release to Mr. Doe while he was still in prison. Faced with the prospect of life in prison versus waiving his civil rights, Mr. Doe signed the release, which I have attached in redacted form. After Mr. Doe signed the waiver, the prosecutor dismissed the charges.

The inherent conflicts of interest attendant to the prosecutorial practice of conditioning dismissal of criminal charges on waiving civil rights troubled the Clinic and others who learned of the practice. The Clinic does not know how often prosecutors use "release-dismissal" agreements in North Carolina. However, in light of Mr. Doe's experience, we felt compelled to bring this inquiry to the North Carolina Ethics Committee and request that the Committee issue a Formal Ethics Opinion on the practice, with the hope and expectation that the Committee will find it impermissible.

In preparing this inquiry, two of my students, Windy R. Majer and Monifa S. Crawford, researched, contacted, or attempted to contact all fifty state bars, as well as the bar for the District of Columbia, to determine their respective positions on the use of release-dismissal

agreements.[1] The vast majority of state bars have not specifically addressed this issue. Of those that have, six out of thirteen flatly prohibit a prosecutor from using release-dismissal agreements.[2] As more fully explained below, we believe the North Carolina State Bar should join these six states because a flat prohibition of release-dismissal agreements is the only policy that protects the interests and integrity of the criminal justice system.

Inquiry

Do the North Carolina Rules of Professional Conduct permit a prosecutor to enter into an agreement with a criminal defendant to dismiss criminal charges in exchange for the defendant's release of any civil claims arising out of the defendant's arrest, prosecution, and/or conviction?[3]

Proposed Answer

No. North Carolina Rules of Professional Conduct 1.7(a), 3.8(a), and 8.4(d) prohibit the practice of using release-dismissal agreements based on the inherent conflict of interest they create between a prosecutor's duty to enforce the law and the goal of insulating third parties from civil liability. As several other states have determined, this conflict undermines the integrity of the criminal justice system by placing liability concerns over that of a prosecutor's special responsibility as a minister of justice. By prohibiting this practice, the Committee will assist prosecutors in fulfilling their constitutional mandate, protect criminal defendants from undue coercion, and in turn advance the truth-seeking function of the criminal justice system.

Release-Dismissal Agreements

A. The Various Ethical Approaches Other State Bars Use.

States' approaches to the use of release-dismissal agreements fall into four general categories: (1) Four states have banned the practice outright;[4] (2) two states have banned the

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[1] Iowa, Nevada, and Utah did not reply to our inquiry.

[2] The other seven states permit the use of release-dismissal agreements under certain circumstances and will be discussed in greater detail later in this inquiry.

[3] The ABA has defined "release-dismissal" agreements as "A prosecutor's agreement to dismiss criminal charges in exchange for the defendant's release of any civil claims arising out of the arrest." *Model Rules of Prof'l Conduct R.* 3.8 annot. (2007) (Release-Dismissal Agreements). According to the commentary of ABA Model Rule 3.8, the agreements are "valid and enforceable as long as they are voluntary, if there is no evidence of prosecutorial misconduct, and if the enforcement would not adversely affect the public interest."

[4] *See infra* pp. 6-9.

practice for prosecutors, but a defense attorney could draft a release and propose it to a prosecutor;[5] (3) one state considers the use of such agreements permissible under strict guidelines;[6] and (4) six states find such releases permissible as long as the release and the way in which it was executed conform to the state's Rules of Professional Conduct ("RPC").[7] Some of these six states also require that the release-dismissal conforms to the minimal requirements set out in the *Town of Newton v. Rumery*[8] plurality opinion discussed below.

B. The United States Supreme Court Has Held Release-Dismissal Agreements May Be Enforceable Under Certain Circumstances, but the Court Has Not Addressed the Ethical Implications of Their Use.

A complete assessment of why the Committee should ban the use of release-dismissal agreements begins with *Town of Newton v. Rumery*,[9] the seminal case that led many states to issue advisory opinions and/or amend their professional rules concerning the practice. Justice Powell, writing for the plurality, found that release-dismissal agreements were not *per se* invalid

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[5] *See infra* pp. 9-10.

[6] *Colo. Ethics Opinion* 62 (1982; Revised 1988; Addendum Issued 1995) (For a release to be valid, (1) coercion must not be used in obtaining it, (2) the charges must arise from the same transaction as the criminal episode and be well founded, (3) the Prosecutor must not be aware that a serious civil rights violation occurred, (4) the defendant must be informed, (5) voluntarily consented to, (6) judicially approved, and (7) in the best interest of the public.).

[7] Alabama (permissible as long as the Prosecutor uses no coercion or threats). No Formal Opinion, Telephone Interview with Samuel S. Patridge, Assistant General Counsel, Alabama State Bar (October 5, 2011); Alaska (permissible as long as the lawyer has a well grounded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process). Alaska Ethics Opinion No. 97-2 (1997); Connecticut (In at least two circumstances, release-dismissals are not valid (1) if the prosecutor knows or should know there is no probable cause or (2) the Prosecutor is proceeding with the prosecution primarily for the purpose of seeking a civil release). Conn. Informal Ethics Opinion 00-24 (2000); Idaho (the Bar has no specific rule or ethics opinion on the subject, but if the issue was raised in a grievance, the Bar would consider it based on the facts and application of applicable law including *Rumery*). E-mail from Bradley G. Andrews, Bar Counsel, Idaho State Bar, to Windy R. Majer, Student, Charlotte Sch. of Law (Oct. 11, 2011, 10:15 EST) (on file with author). Oregon (prosecutors are held specifically to RPC 3.8(a) and 3.4(g) and a standard similar to *Rumery*. A prosecutor cannot threaten to bring charges, but once the charges are in place, a release can be utilized). Or. Formal Ethics Opinion 113 (2005).; Washington (Permissible if (1) Prosecutor has a well grounded belief that the charges are supported by probable cause; (2) Defendant is informed of the implications of the agreement; and (3) Release would be enforceable under *Rumery*). Wash. Advisory Opinion 1135 (1987).

[8] 480 U.S. 386, 107 S.Ct. 1187 (1987).

[9] 480 U.S. 386, 107 S.Ct. 1187 (1987).

[10] *Id.*

as long as the defendant voluntarily entered into the agreement, and the prosecutor had a legitimate reason to make the agreement that was directly related to his prosecutorial responsibilities and was independent of his discretion to bring criminal charges.[10] Significantly, Justice Powell noted that the respondent was a "sophisticated businessman, was not in jail and was represented by an experienced criminal lawyer, who drafted the agreement."[11]

While *Rumery* holds that in certain circumstances release-dismissal agreements are enforceable, *Rumery* did not address whether conditioning the dismissal of criminal charges upon a civil rights waiver was ethical.[12]

C. North Carolina, like the Vast Majority of States, Has Not Addressed Whether Its Rules of Professional Conduct Prohibit the Use of Release-Dismissal Agreements.

Like the majority of states, North Carolina has never addressed this issue.[13] During its investigation, the Clinic found that many of the state ethics counsel, particularly for the states

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[10] *Id.*

[11] *Id.* at 394.

[12] *Lawyers' Manual on Prof'l Conduct* 61:601 (1997) (the ABA noted that *Rumery* did not settle the professional propriety of the practice).

[13] State Bars that have not addressed this specific issue in Formal or Informal Opinions include: Arizona, E-mail from Steve Little, Assistant Ethics Counsel, State Bar of Arizona, to Windy R. Majer, Student, Charlotte Sch. of Law (Sept. 22, 2011, 18:35 EST) (on file with author); Arkansas, Telephone Interview with Stark Ligon, Director of the Committee of Professional Conduct, Arkansas Bar Association (Oct. 5, 2011); Delaware (Bar would not speak to individuals who were not a member. During a telephone conversation with Lisa Minutola, she stated she has never seen a release of this nature used in her career in the PDO and knows of no Advisory Opinions or RPC that address this issue.) Telephone Interview with Lisa Minutola, Chief of Legal Services, Officer of the Public Defender (Sept. 26, 2011); District of Columbia (Our inquiry was considered "an interesting question of first impression" and docketed for review by the D.C. Bar's Ethics Committee on October 18, 2011. A formal opinion is currently being drafted.) E-mail from Hope C. Todd, Assistant Director for Legal Ethics, Regulation Counsel, to Windy R. Majer, Student, Charlotte Sch. of Law (Sept. 19, 2011) (on file with author); Florida (Based on a conversation with Jeffery M. Hazen, Ethics Counsel, this issue has not been formally addressed by the Ethics Committee, and although only a member of the Florida Bar can docket an inquiry, he considers this issue one of great importance and supports our position.); Georgia, E-mail from Bill Smith, Ethics Counsel, State Bar of Georgia, to Windy R. Majer, Student, Charlotte Sch. of Law (Sept. 21, 2011) (on file with author); Hawaii, Telephone Interview with Iris Ito, Assistant Director, Hawaii State Bar Association (Oct. 13, 2011); Illinois, Telephone Interview with a Bar Representative, Illinois State Bar Association (Oct. 17, 2011), email received from Allison W. at Legal Ethics Consulting (Oct. 20, 2011, 4:06 EST); Kansas, Telephone Interview with Joseph Molina, Director of Government Affairs, Kansas Bar Association (Nov. 27, 2011); Kentucky, E-mail from Linda A. Gosnell, Chief Bar Counsel, Kentucky Bar Association, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Oct. 18, 2011, 12:53 EST) (on file with author), Additional research was also conducted by Windy R. Majer & Monifa S. Crawford via Kentucky's Bar Association Ethics Opinions; Louisiana, Telephone Interview with Eric Barefield, Assistant Ethics Counsel,

that have not yet addressed the issue, are very interested in it and some considered it to be the next "hot" ethics topic.

The District of Columbia's Bar docketed an inquiry based on our email asking for its position on the topic. Hope C. Todd, Assistant Director for Legal Ethics, Regulation Counsel, considered our inquiry "an interesting question of first impression" and docketed it for review by the D.C. Bar's Ethics Committee on October 18, 2011. An attorney on the ethics committee is currently drafting a formal opinion.

D. The North Carolina State Bar Should Prohibit the Use of Release-Dismissal Agreements.

The applicable North Carolina RPC are 1.7(a) governing conflicts of interest, 3.8(a) requiring a prosecutor to refrain from prosecuting a charge that the prosecutor knows is not

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Louisiana State Bar Association (Nov. 7, 2011); Maine, Telephone Interview with Aria Ian, Assistant Bar Counsel, Maine State Bar Association (Nov. 30, 2011); Maryland, Per telephone conversation with Donald E. Pallet, Esquire, a member of the Maryland Bar. Additional research of advisory opinions and rules was conducted by Windy R. Majer; Michigan, Telephone Interview with Nkrumah Johnson-Wynn, Professional Standards Service Counsel, State Bar of Michigan, (Sept. 27, 2011); Minnesota, Telephone Interview with Joshua H. Brand, Assistant Director, Minnesota Lawyers Professional Responsibility Board (Sept. 23, 2011).); Mississippi, Telephone Interview with Melissa Martin, Deputy General Counsel, Mississippi Bar Association (Sept. 5, 2011); Missouri, Telephone Interview with Sara Rittman, Legal Ethics Counsel, The Missouri Bar (Oct. 4, 2011); Montana, E-mail from Betsy Brandborg, Bar Counsel and Deputy Director, State Bar of Montana, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Sept. 22, 2011, 19:16 EST) (on file with author); Nebraska (Confirmed during a conversation with Jane Schoenike, Executive Director on September 27, 2011.); New Hampshire (Confirmed during conversation with Rose Anosabar in the Ethics Department on September 27, 2011.); New Mexico (Confirmed through independent research and by speaking with two criminal defense attorneys who are the Chair and the Chair Elect of the Criminal Section of the Bar.); New York, E-mail from Richard Rifkin, Special Counsel, New York State Bar Association, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Sept. 22, 2011, 15:15 EST) (on file with author); North Dakota (Confirmed through independent research.); Oklahoma (Confirmed during conversation with Travis Pickins, Head of Ethics Counsel on September 30, 2011.); Pennsylvania, E-mail from Victoria Lee, Ethics Counsel, Pennsylvania Bar Association, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Sept. 21, 2011, 10:29 EST) (on file with author); Rhode Island (Confirmed during conversation with Elizabeth Delpadre, Ethics Counsel, on September 30, 2011.); South Dakota, E-mail from Thomas C. Barnett, Jr., Executive Director, State Bar of South Dakota, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Sept. 20, 2011, 10:45 EST) (on file with author); Tennessee (Confirmed during conversation with James Vick, Counsel on Board of Professional Responsibility.); Texas, Confirmed via email from Mr. Jonathan E. Smaby, Executive Director, State Bar of Texas, to Windy R. Majer, Student, Charlotte Sch. of Law (Oct. 26, 2011, 16:41 GMT) (on file with author); Vermont, Telephone Interview with Sheila Ware, Chair of Ethics Board, Vermont Bar Association (Sept. 27, 2011); Virginia, E-mail from Emily F. Hedrick, Assistant Ethics Counsel, Virginia State Bar, to Windy R. Majer, Student, Charlotte Sch. of Law (Oct. 26, 2011, 11:16 EST) (on file with author); West Virginia, Telephone Interview with West Virginia State Bar Representative on Sept. 15, 2011; Wisconsin, Telephone Interview with Timothy J. Pierce, Ethics Counsel, State Bar of Wisconsin (Oct. 5, 2010); Wyoming, E-mail from Mark Gifford, Bar Counsel, Wyoming State Bar, to Monifa S. Crawford, Student, Charlotte Sch. of Law (Oct. 12, 2011, 9:43 EST) (on file with author).

supported by probable cause, and 8.4(d) which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Individually and collectively they should prohibit the use of release-dismissal agreements. While North Carolina has yet to apply its rules to release-agreements, of the six states that have addressed the issue, four have flatly prohibited the practice and two prohibit prosecutors from offering release-dismissal agreements.

Indiana's findings on this issue are particularly persuasive, given that its relevant RPC are identical to North Carolina's. The Indiana State Bar prohibited the practice pursuant to Rules 1.7(a), 3.8(a), and 8.4(d).[14] In explaining its rationale the Committee wrote:

> The committee is of the opinion that release-dismissal agreements violate RPC 1.7(a), which states in pertinent part, "A lawyer shall not represent a client if the representation of that client will be directly adverse to another client." In the case of release-dismissal agreements, the prosecutor has the competing interests of the state of Indiana, whom he/she represents, and the interests of the law enforcement agency or municipality who is the subject of a potential civil suit. The prosecutor's primary client is the state of Indiana, and the citizens of Indiana are entitled to prosecution of criminal matters without any consideration of the civil liability of others.
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> The inherent difficulties for a prosecuting attorney in trying to fashion release-dismissal agreements were noted in the dissenting opinion in *Town of Newton*: There is, however, an obvious potential conflict between the prosecutor's duty to enforce the law and his objective of protecting members of the Police Department who are accused of unlawful conduct. The public is entitled to have the prosecutor's decision to go forward with a criminal case, or to dismiss it, made independently of his concerns about the potential damages liability of the Police Department. It is equally clear that this separation of functions cannot be achieved if the prosecutor may use the threat of criminal prosecution as a weapon to obtain a favorable termination of a civil claim against the police. In negotiating a release-dismissal agreement, the prosecutor inevitably represents both the public and the police. When release agreements are enforceable, consideration of the police interest in

[14] Ind. Ethics Opinion No. 2 (2005).

> avoiding damages liability severely hampers the prosecutor's ability to conform to the strictures of professional responsibility in deciding whether to prosecute. The ethical obligation of every prosecutor is consistent with the general and fundamental rule that "a lawyer should exercise independent professional judgment on behalf of a client."[15]

Similarly, the South Carolina Bar declared that

> "[t]he solicitor cannot use the criminal process to obtain a favorable result for a third party in a civil action (potential or actual) even if the solicitor has no direct involvement in the civil action. . . . Even where such an agreement is instigated by the defense without suggestion from the solicitor, the solicitor may not ethically accept the offer."[16]

And while New York's Bar has not issued a formal or informal opinion, its Court of Appeals in *Cowles v. Brownell*[17] held:

> Insulation from civil liability is not the duty of the prosecutor. The prosecutor's obligation is to represent the people and to that end, to exercise independent judgment in deciding to prosecute or refrain from prosecution. This obligation cannot be fulfilled when the prosecutor undertakes also to represent a police officer for reasons divorced from any criminal justice concern. To enforce a release-dismissal agreement under these circumstances is simply to encourage violation of the prosecutor's obligation.
>
> In reaching this conclusion, we are aware that a plurality of the United States Supreme Court recently upheld a release-dismissal agreement similar to the one at issue (*see, Newton v. Rumery, 480 U.S. 386, 107 S.Ct. 1187, 94 L.Ed.2d 405).* To the extent that the decision was based on the fact that in *Rumery* the prosecutor had what was deemed "an independent, legitimate reason directly

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[15] *Id.*

[16] S.C. Ethics Advisory Opinion No. 05-17 (2005).

[17] 73 N.Y.2d 382, 538 N.E.2d 325 (1989).

> related to [the County Attorney's] prosecutorial responsibilities" *(id., at 398, 107 S.Ct. at 1195),* we agree that such a reason-if genuine, compelling and legitimately related to the prosecutorial function-might overcome the strong policy considerations disfavoring enforcement of such agreements. We emphasize, however, that absent such reasons, release-dismissal agreements present an unacceptable risk of impairing the integrity of the criminal justice process.[18]

Further, the Ethics Committee in New Jersey confirmed that

> RPC 3.4(g)[19] prohibits a prosecutor from conditioning entry of a plea or entry into pretrial intervention in a criminal, quasi-criminal, or motor vehicle matter on the defendant's release from civil liability and agreement to hold harmless any person or entity such as the police, the prosecutor, or a governmental entity. The prohibition applies in all situations, including when the defendant's release from liability and agreement to hold harmless is initially offered by defense counsel.[20]

Massachusetts agrees, holding in *Foley v. Lowell District Court,* 398 Mass. 800, 805 (1986), that it considers "the practice of dismissing criminal complaints on the condition that releases be executed inappropriate, whether undertaken by a judge or a prosecutor."

While permitting a defense attorney to offer a release-dismissal agreement, the California State Bar, in flatly prohibiting a prosecutor from doing the same, stated:

> We are aware that the release-dismissal procedure has been considered both by the U.S. Supreme Court in *Newton v. Rumery*

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[18] *Id* at 387.

[19] Although New Jersey, like Indiana and South Carolina, adopted the same ABA Model Rules of Professional Conduct that Indiana relied on to ban the practice of using release-dismissal agreements, New Jersey and South Carolina went a step further and added non-model ABA rules to their RPC on which their Opinions are based. NJRPC 3.4(g) states that a lawyer shall not "present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter." SCRPC 4.5 states that a lawyer shall not "present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter."

[20] N.J. Advisory Opinion No. 714 (2008).

> (1987) 480 U.S. 386 and by the California Supreme Court in *Hoines v. Barney's Club* (1980) 28 Cal.3d 603. Although both courts found as a matter of law that such agreements can in some cases be enforceable, none has dealt squarely with the ethical issues addressed here.
>
> Both *Rumery* and *Hoines* were opinions of sharply divided courts, and in *Rumery* it was a bare plurality which declined to ban enforcement of release-dismissal agreements altogether. Neither case involved the actions of California prosecutors who would be subject to our Rules of Professional Conduct. Accordingly, the agreements in those cases were not analyzed in light of rule 5-100.[21]

(internal citations omitted). The underlying policy of Rule 5-100

> seeks to discourage the threat of use of criminal, administrative or disciplinary proceedings to exert leverage in the settlement of civil disputes. The rules promote the public policy of allowing free and open access to civil courts without fear that the criminal, administrative or disciplinary process will be used to coerce the resolution of private civil controversies.
>
> A prosecutor's offer to dismiss a colorable criminal action in exchange for a release from civil liability is tantamount to a threat to continue the action if the defendant will not give such a release. There is often an imbalance of power between the prosecution and the individual defendant. The nature of this relationship makes it difficult to consider a release-dismissal agreement by the same standards as other settlement agreements.[22]

Following suit, the Supreme Court of Ohio found that

> "[w]hen a prosecutor becomes aware that a criminal action lacks merit, it is improper under DR 1-102(A) (5) and DR 7-105(A) of

[21] Cal. Formal Ethics Opinion No. 106 (1989).

[22] *Id.*

> the Ohio Code of Professional Responsibility for the prosecutor to offer to dismiss the criminal charge in exchange for the defendant's promise to sign a release of all civil claims against an arresting police officer, other officers at the scene, and the city."[23]

When seeking further clarification on Ohio's Opinion, Michelle A. Hall, the Senior Staff Counsel for the Board of Commissioners on Grievances and Discipline for the Supreme Court of Ohio, said that it is never permissible for a prosecutor to use a release, whether the charge has merit or not.

Likewise, Comment One of North Carolina's RPC 3.8 states

> "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely convict. The responsibility carries with it specific obligations to see that the defendant is accorded procedural justices and that guilt is decided upon the basis of sufficient evidence."

States banning the use of release-dismissal agreements have done so based on the sound public policy reflected in North Carolina's own Rules of Professional Conduct. Release-dismissal agreements undermine the integrity of the criminal justice system, unduly insulate third parties from civil liability, corrupt the special role of a prosecutor as a minister of justice, take advantage of vulnerable defendants (particularly those like Mr. Doe who had been incarcerated for ten years at the time he signed), and undermine the truth-seeking function of the criminal justice system.

In order to protect the prosecutor's role as a "minister of justice" and to assure that a "defendant is accorded procedural justice" so that guilt be decided by the merits of the charge, we respectfully request that the North Carolina State Bar's Ethics Committee issue a Formal Ethics Opinion on the use of release-dismissal agreements, holding that RPC 1.7(a), 3.8(a), and 8.4(d) prohibit a prosecutor from entering into an agreement with a criminal defendant to dismiss criminal charges or convictions in exchange for the defendant's release of any civil claims arising out of the defendant's arrest, prosecution, and/or conviction.

We thank you for taking the time to review our request. If you have any questions or require additional information, please contact us.

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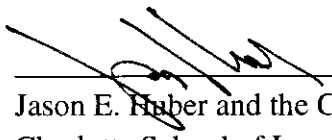
[23] Ohio Ethics Opinion No. 94-10 (1994).

Respectfully,



Jason E. Huber and the Civil Rights Clinic
Charlotte School of Law
2145 Suttle Avenue, Charlotte, NC 28208
jhuber@charlottelaw.edu
P: (704) 971-8381

cc: James C. Gaither, Jr., District Attorney for Catawba County

RELEASE

I, [redacted] being of lawful age, for and in consideration of release from [redacted] Department of Corrections, do hereby voluntarily agree without any threat, coercion or prosecutorial misconduct, that he will never, from this day forward, bring legal action of any kind against the State of North Carolina, the County of Catawba, the Catawba County Sheriff's Department, Detective Jim Hudson of the Catawba County Sheriff's Department, any and all members and employees of the Catawba County District Attorney's Office under the elected District Attorney, Bob Thomas, any and all members and employees of the Catawba County District Attorney's Office under the newly elected District Attorney, David Flaherty, Jr., and any prosecuting witnesses that testified for the State at the trial of [redacted] in cases 89CRS2074 and 89CRS2075.

The undersigned does hereby agree to *release,* hold harmless and absolve of any liability the above-referenced individuals and government entities and agencies with respect to the State of North Carolina vs. [redacted] criminal case numbers 89CRS2074 and 89CRS2075, *and with respect to any and all other acts, failures to act, errors, omissions and claims of every nature, along with all causes of action or other such things of any type, whether existing or arising, against the said individuals, entities and/or agencies* [redacted] *existing or anticipated as of the date of the execution of this Release.*

The undersigned has read the foregoing release and fully understands it.

Signed, sealed, and delivered this the *23* day of *Sept*, 1998.

CAUTION: READ BEFORE SIGNING

9/23/98 *OAP 9/23/98*

[redacted] (SEAL)

WITNESSES:

[redacted] Attorney for the Defendant

[redacted] Attorney for the Defendant

EXHIBIT 10

This Release is given and executed with due knowledge + cognizance of the Supreme Court's recognition of the validity and enforcibility of Releases of this nature in the case of Town of Newton vs. [illegible] (1987)