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J.W. Boyce (1884-1915)
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May 18, 1994

Re: Request for Ethics Opinion 94-7

Dear

You have requested an opinion from this Committee based upon the following facts:

FACTS

The County Commissioners in the county in which you practice have elected to change the present court-appointment system for hiring public defenders. Having tentatively tabled a decision to create a public defender's office or to contract with one firm, the County Commissioners are presently considering a proposal put forth by several defense attorneys. The defense attorneys, from various law offices in the same community, desire to join together for the limited purpose of collective bargaining with the County Commissioners for individual contracts with identical terms to provide court-appointed legal representation to indigent criminal defendants, abused and neglected children and their parents, mental health and alcohol commitments and juvenile delinquents.

Based upon these facts, you have asked this Committee whether or not such an association of attorneys who join together for the purpose of collective bargaining with the County Commissioners for individual contracts with identical terms to provide court-appointed legal representation would lose their autonomy as individual practitioners and have a conflict of interest with one another which conflict would preclude representation of co-defendants and/or adverse parties.

OPINION

It is the opinion of this Committee that the attorneys involved in the pending negotiations with the County Commissioners

would have no conflict of interest that would prevent their appearance in criminal proceedings on behalf of co-defendants or other parties whose interest may be adverse to a party in a criminal proceeding. It is the opinion of this Committee that none of the South Dakota Rules of Professional Conduct relating to conflicts of interest are applicable here. In reaching this opinion, this Committee has relied upon the representations in your letter that the attorneys participating in the negotiations with the County Commissioners have no relationship beyond their joint participation in the negotiations as a form of collective bargaining unit. If the attorneys conducting the negotiations were intending to become associated with one another in connection with the handling of indigent criminal defense work, it would be necessary for this Committee to examine the definition of a "firm" as addressed within the Comment to Rule 1.10. As such does not appear to be the case here, there is, in this Committee's opinion, no conflict of interest.

Committee Members John Brown and Lori Wilbur did not participate in this request due to a conflict.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee