

State Bar of South Dakota

Ethics Opinion 96-2

March 12, 1996

- **Rule 7.2**
- **Subject: Advertisements; Contingent fees and expenses; Out-of-state advertising**
- **Summary: An attorney advertises contingent fees in yellow pages of another state. Ad does not violate South Dakota Rules of professional conduct if it complies with the state of origin's rules with regard to advertising and solicitation and the attorney has a reasonable expectation that the directory will not be disseminated in South Dakota.**

FACTS

You are licensed in both North and South Dakota. You wish to place an advertisement in the Yellow Pages in North Dakota which mentions contingent fees but does not state whether contingent fees are computed before or after deduction of costs or whether the client will bear expenses regardless of the outcome. The question you pose to this Committee is whether if you place such an ad you will have violated a duty owed as a member of the South Dakota bar.

OPINION

Rule 7.2 of the South Dakota Rules of Professional Conduct provides:

“This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.”

More specifically, under Rule 7.2(g)(i)(iii) if a lawyer intends to mention in an advertisement that the lawyer uses contingent fees the advertisement must conspicuously disclose if the fee is computed before or after deduction of costs and “conspicuously state” that the client will bear expenses regardless of outcome. Assuming that the North Dakota Rules of Professional Conduct do not require advertisements which mention fee information to state whether fees are computed before or after deduction of costs or whether the client will bear expenses regardless of outcome, there would be nothing under the South Dakota Rules of Professional Conduct that would prohibit you from placing such an advertisement in the North Dakota Yellow Pages unless you reasonably expect the advertisement to be received or disseminated in the State of South Dakota. This Committee is aware that many libraries and businesses in South Dakota subscribe to telephone books from cities or regions in other states, particularly the states bordering South Dakota. Because of this, this Committee is of the opinion that it can be reasonably expected that the North Dakota Yellow Pages will be received or disseminated in South Dakota. Thus, it is the opinion of this Committee that you must comply with Rule 7.2 of the South Dakota Rules of Professional Conduct in placing your Yellow Page ad in North Dakota.

Michael S. McKnight
Chair, Ethics Committee
State Bar of South Dakota