

## Ethics Opinion 2002-2

April 22, 2002

- **Rules: 1.1; 1.6**
- **Subject: Formation of Attorney-client relationship via e-mail communication**
- **Summary: E-mail communication from prospective client can create attorney-client relationship**

Attorney's firm has a website on the Internet. The website contains a jump site allowing the viewer to send an e-mail message to the attorney. The attorney receives an e-mail regarding a potential Will contest that does include background facts but no identifiable information about the sender other than the sender's e-mail address. The e-mail ends by stating that the sender would really like to have an answer to her inquiry and thanks the attorney.

### DISCUSSION

An attorney's ethical obligations are triggered once an attorney-client relationship has been formed. *See e.g.* Rules 1.1 and 1.6. In previous Ethics Opinions, 99-5, 95-15 and 93-15, the Ethics Committee adopted the definition of "client" contained in SDCL 19-13-2. That definition encompasses not only a person who is "rendered professional legal services by a lawyer" but also includes a person "who consults a lawyer with a view to obtaining professional legal services from him." Under this definition, the sender of an e-mail may be deemed a "client." Further, most websites contain a statement inviting the viewer to contact the attorney and many provide a jump site allowing the viewer to send the attorney an immediate e-mail. Therefore, a stronger argument can be made that a person accepting the invitation on the website was sending the e-mail with a "view toward obtaining professional legal services." However, the precise determination of whether an attorney-client relationship has been formed requires application of substantive law which is beyond the purview of this Committee.

It is the opinion of the Ethics Committee that e-mail communications should be treated the same as any other communication to an attorney, i.e., telephone, facsimile, U.S. mail. The response of what to do with an "unsolicited" or "solicited" e-mail therefore is the same as what should be done when an attorney receives an inquiry from a prospective client by some other medium. While not mandated by the Rules of Ethics, legal authorities suggest the use of a non-engagement communication so as to avoid any confusion regarding the creation of the attorney-client relationship.

***Susan Brunick Simons, Chair***  
***Ethics Committee***