

BOYCE, MURPHY, McDOWELL & GREENFIELD

ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashby
Vance R.C. Goldammer
Thomas J. Welk
Terry N. Prendergast
James E. McMahon
Douglas J. Hajek
Michael S. McKnight
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sudbeck

Norwest Center, Suite 600
101 North Phillips Avenue
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Telecopier 605 334-0618

Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

January 17, 1995

Re: Request for Ethics Opinion 94-21

Dear

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

FACTS

You are an associate attorney in a four man law firm. There are two partners and two associates. The firm has offices in two cities. You have been appointed to serve as vice-chairman of the county board of mental illness. In that capacity, your responsibilities include, reviewing petitions asserting the need for immediate intervention of a mentally ill person, determining if the petition is sufficient and, if so, executing an order for examination, emergency warrant for detention, and an emergency order for detention of allegedly mental ill persons.

Based upon these facts you have asked this Committee two questions:

1. Whether or not it is a conflict of interest or, otherwise, you would be in violation of the South Dakota Rules of Professional Conduct, if in your capacity of vice-chairman of the mental health board, you order examinations, execute an emergency warrant for detention, or an emergency order for detention, or otherwise serve in your capacity as vice-chairman, wherein the alleged mentally ill person is either a current client of the firm in an unrelated matter or a past client of the firm.

2. If you "recuse" yourself from participation as a board member/vice-chairman for a particular individual, can another member of the firm represent the allegedly mentally ill person before the board.

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OPINION

In response to question no. 1, it is the opinion of this Committee that there would be a conflict of interest if you, in your capacity as vice-chairman of the mental health board, were to serve in your capacity as vice-chairman in cases where the alleged mentally ill person is a current client of the firm. This Committee also believes that a conflict of interest may exist with respect to past clients of the firm depending on the circumstances of the past representation. See, Rule 1.9. The question of conflicts with a past client will have to be resolved on a case by case basis.

In response to question no. 2, it is the opinion of this Committee that under Rule 1.7 and Rule 1.10 another member of your firm could continue to represent the allegedly mentally ill person if you were to recuse yourself from participation as a board member/vice-chairman only if consent of the client after consultation was obtained. Given the fact, however, that you are dealing with an allegedly mentally ill person, the validity of the consent obtained is questionable and this Committee feels that your firm should not continue to represent the allegedly mentally ill person.

Thank you.

Sincerely,

Michael S. McKnight, Chairman
Ethics Committee