

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)

June 15, 1994

Re: Request for Ethics Opinion 94-12

Dear

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

FACTS

As part of your law practice, you prepare and file individual income tax reports as well as some partnership reports, corporate reports and fiduciary tax returns. A nonlawyer in the community in which you practice has a substantial tax practice. This individual has requested that you consider taking on some of his clients because he is retiring. This individual has requested that you pay him 5% per year of the fees billed for the tax preparation for his former clients. This arrangement will be for a period of three years. According to your request, the payment of the 5% of the fees billed will only be for the actual preparation of the tax reports. This percentage will not be computed on any consultation or tax planning rendered to any of this individual's former clients.

Based upon these facts, you have asked this Committee whether or not such an arrangement would constitute a sharing of legal fees with a nonlawyer.

OPINION

It is the opinion of this Committee that the arrangement with the nonlawyer described above would violate Rule 5.4 of the South Dakota Rules of Professional Conduct. In Ethics Opinion 93-4, this Committee determined that when preparing an income tax return, a lawyer is representing a client and rendering professional legal services to a client. Under Rule 5.4, a lawyer or law firm is prohibited from sharing legal fees with a nonlawyer except in

COPY

June 15, 1994
Page 2

circumstances that are not relevant to this request. Because preparing an income tax return is rendering professional legal services to a client, any fees generated by the lawyer from the preparation of income tax returns would be legal fees under Rule 5.4. Thus, under the arrangement described above, paying the nonlawyer 5% of the fees generated for tax preparation would be an arrangement sharing legal fees with a nonlawyer which is clearly prohibited under Rule 5.4.

Thank you.

Sincerely,

Michael S. McKnight, Chairman
Ethics Committee