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John S. Murphy (1924-1966)

September 20, 1993

Attorney at Law

Re: Request for Ethics Opinion 93-11

Dear

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

FACTS

You were retained by a client to obtain a divorce for her. You filed a summons and complaint and asked the client to stay in touch with you so that this matter could be resolved. The client did not stay in touch and when you needed to contact her you would have to call her at work. The client did not respond to letters that you sent to her.

In working on her divorce, you could not obtain personal service on her husband who was traveling around to different communities in Nebraska and South Dakota. You advised your client that you should attempt to serve the husband by publication and you needed her to come to your office to discuss this.

You had set an appointment for her in January and she failed to show for this appointment. You talked with her on the telephone at work a couple of times in February and March, 1993. On April 12, 1993, you wrote to her and indicated that you needed to see her in your office as soon as possible. You received no response to that letter. You tried to call your client at work and was informed that she no longer worked there and they did not know her whereabouts.

You then wrote to her on May 19, 1993, and sent this letter by certified mail. This letter was never picked up and was returned with notice that your client had moved and left no forwarding address.

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You have in trust a sum of money which is unearned. You believe that you are going to have to ask the court to withdraw from this matter because you do not know the whereabouts of your client.

Based upon these facts, you have asked this Committee for its opinion as to how you are to officially conclude this matter and what you are to do with the money that is unearned and in your trust account.

OPINION

It is the opinion of this Committee that under the facts as described above you would be entitled to terminate your representation of your client in accordance with Rule 1.16. This Committee believes that you must first make a reasonably diligent attempt to determine the whereabouts of your client so that notice of your intent to withdraw could be given to your client. If, after a reasonably diligent search for your client, you are unable to locate the whereabouts of your client for purposes of giving notice to your client of your intent to withdraw, you should present the facts of your search to the court and let the court determine whether or not it is necessary for you to publish your notice of intent to withdraw.

With respect to the unearned funds in your trust account, it is the opinion of this Committee that under Rule 1.15, these funds must remain in your trust account subject to the provisions and the applicability of the unclaimed property act of SDCL 43-41B et seq.

Thank you.

Sincerely,

Michael S. McKnight, Chairman
Ethics Committee