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

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)

July 16, 1993

Attorney at Law

RE: Ethics Opinion 93-10

Dear

You have requested an ethics opinion from this Committee concerning the following factual situation.

FACTS

You were initially contacted by John Doe on January 3, 1990, concerning criminal charges filed against his son (Jim Doe) and daughter (Jane Doe). Your notes reflect that you discussed with John Doe his daughter Jane, age 19, and his son Jim, age 21. The information John Doe gave you was that there were seven individuals in a vehicle driven by his son Jim. John Doe indicated that his son Jim was charged with driving while under the influence and open container. John Doe further indicated that Jim's blood alcohol level was .148.

Based upon this discussion, you did follow up with the state's attorney concerning the appearances for Jane and Jim and obtaining copies of the various police reports. Your notes then reflect that you had a telephone conference with Jim Doe at his home (he was living with his parents at the time) concerning his blood alcohol level. The only other contact that you had with Jim was a conference in your office with his parents and Jim personally concerning "options, criminal charges, defenses, civil litigation, criminal procedure, and penalties." This information was taken from your statement for professional legal services rendered. Services were rendered by you to Jim Doe on January 3, 5, 6, 8, and 11 with respect to this matter. You then subsequently withdrew from the criminal defense of Jim Doe.

Jane Doe, Jim's younger sister, was quite seriously injured in the accident. After withdrawing from the representation of Jim Doe in the defense of the criminal charge, you filed a personal injury lawsuit against Jim Doe on behalf of Jane Doe. The question you raise is whether or not you may represent Jane Doe in her personal injury lawsuit against Jim Doe in light of your previous representation of Jim Doe in the criminal charges arising out of this same accident.

OPINION

It is the opinion of this Committee that Rule 1.9(a) precludes you from representing Jane Doe in civil litigation brought against Jim Doe, whom you had formerly represented. Rule 1.9(a) provides:

> A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation.

It is clear that the representation of Jane Doe in connection with her claim for damages arising out of the traffic accident is a matter that is substantially related to the criminal charges against Jim Doe which arose from the same accident. Further, Jane Doe's interests are materially adverse to Jim Doe's interests. Accordingly, the facts related by you represent a conflict of interest prohibited under the terms of Rule 1.9(a).

Due to a conflict of interest, Committee members Linda Lea Viken and Scott McGregor did not participate in this opinion.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee