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July 2, 1993

Re: Supplement to Ethics Opinion 93-1

Dear

You have asked that we supplement our response to Ethics Opinion 93-1. The basic fact situation is the same as that presented in Ethics Opinion 93-1 except that now the insurance company for whom you are in-house counsel is wondering whether it would be acceptable to hire outside counsel to represent the claimant in the guardian ad litem appointment and settlement approval with the outside counsel's attorney's fees to be paid by the insurance company.

Opinion

It is the opinion of this Committee that it is acceptable for an insurance company to hire, and ethical for outside counsel to represent, the claimant in a guardian ad litem appointment and settlement approval with the outside counsel's attorney's fees to be paid by the insurance company. Under Rule 5.4(c), the outside counsel hired and paid by the insurance company must not permit the insurance company to direct or regulate his or her professional judgment. It should be emphasized that the lawyer hired and paid by the insurance company represents the claimant. Accordingly, the lawyer's duties under the Rules and state law are owed to the claimant not the insurance company, including the requirement under SDCL 30-17-15 that the lawyer represent that the offer is fair, reasonable, and just. See, SDCL 30-17-15.

For your benefit and the benefit of the other members of the Bar, it should be emphasized that what this Committee found objectionable in the facts of Ethics Opinion 93-1 was that you, as in-house counsel, wanted to represent the claimant in the guardian

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ad litem appointment and settlement approval. This Committee opined in Ethics Opinion 93-1 that it would be unethical for in-house counsel to represent the claimant in the guardian ad litem appointment and settlement approval. Such a situation creates an impermissible conflict of interest. In our opinion, however, it would be acceptable for the insurance company to hire and pay outside counsel for such proceeding.

Due to a conflict of interest, Committee member Larry Von Wald did not participate in this request.

Thank you.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee