

# BOYCE, MURPHY, McDOWELL & GREENFIELD

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J.W. Boyce (1884-1915)  
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December 7, 1992

COPY

Re: Ethics Opinion 92-10

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

## FACTS

You undertook to represent a plaintiff in a personal injury action. The action had already been commenced by an attorney under a contingent fee plus costs arrangement. During the course of the action, the attorney who commenced the action was suspended from practice by the South Dakota Supreme Court. Your arrangement with the client is a contingent fee plus costs arrangement as well. You posed two questions to this committee:

- 1) Is the attorney who commenced the case and is under suspension and not in good standing with the State Bar of South Dakota entitled to collect any fee when the matter is finally resolved;
- 2) If the attorney is entitled to collect a fee, is the fee to be the percentage stated in the contingent fee agreement or must it be based upon a quantum meruit basis, or is the attorney to be reimbursed only for the costs advanced.

## OPINION

In response to your first question, it is the opinion of the Committee that the suspended attorney is entitled to a fee when the matter is finally resolved. In Ethics Opinion 90-8, this Committee ruled that a disbarred attorney was entitled to and could be paid those fees earned on cases prior to disbarment despite the prohibition against sharing fees with non-lawyers contained within Rule 5.4(a). If a disbarred attorney is entitled to those fees

December 7, 1992  
Page 2

earned prior to disbarment, then clearly a suspended lawyer is entitled to those fees earned prior to suspension.

In response to your second question, it is the opinion of the Committee that the fee is to be that fee which the lawyer earned prior to the suspension. Such fee should be based on a quantum meruit recovery for the actually work done before the suspension. The lawyer would also be entitled to reimbursement for any costs advanced.

Best regards.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight  
Ethics Committee Chairman