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J.W. Boyce (1884-1915)
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July 16, 1992

Attorney at Law

Re: Ethics Opinion No. 92-6

Dear

Facts

The facts presented in your request indicate that in August of 1989 you were hired to represent a client on a personal injury claim. The client was a Colorado resident visiting South Dakota. The accident giving rise to the personal injury claim occurred in South Dakota. Shortly after the client returned to Colorado, you lost contact with the client and cannot locate his whereabouts. The statute of limitations runs August 7, 1992.

Opinion

The ethical obligation of the lawyer under these facts is controlled by the nature of the agreement between the client and the lawyer. Rule 1.2 provides, in pertinent part, that: "A lawyer shall abide by a client's decision concerning the objectives of representation. . ."

If the agreement explicitly limits the lawyer's authority to commence an action without the specific prior authorization of the client, then the lawyer does not have a strictly ethical obligation to commence an action before the running of the statute of limitations. Avoidance of potential malpractice may nevertheless make it advisable to start the action. The lawyer would have an obligation under Rule 1.3 to make an exhaustive search for the client to determine his whereabouts and seek the client's authorization to file suit prior to the running of the statute of limitations.

If the agreement does not explicitly limit the lawyer's authority to commence an action without specific prior authorization of the

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client, then it is the opinion of this Committee that the lawyer does have an ethical obligation to commence the action prior to the running of the statute of limitations. See, Rule 1.1 and Rule 1.3. The lawyer would again have an obligation to make an exhaustive search to locate the client. If, after the action has been commenced and an exhaustive search conducted the client cannot be located, then the lawyer could move to withdraw from the action.

Thank you.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee