

DONALD E. COVEY
LAWYER
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WINNER, SOUTH DAKOTA 57580
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October 24, 1991

RE: Ethics Opinion 91-19

Dear

You have related a factual situation which I summarize as follows:

FACTS

You were appointed by the court to represent an indigent defendant in a criminal case. When her case came up for trial, presumably to a jury, she failed to appear. A bench warrant was issued but she still has not been found nor appeared for trial.

The judge in the case has informed you, as the attorney for the absent defendant, that he intends to question you as her lawyer about the circumstances of her disappearance which you believe will include an inquiry whether or not you notified her of her trial date.

Your question is whether or not the court can compel you to testify regarding the contents of any communication between you and your client?

OPINION

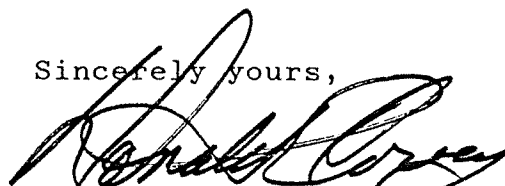
Under the South Dakota Rules of Professional Conduct 1.6(b)(2) and (3), a lawyer may respond to a claim against the lawyer arising out of the representation so as to establish a defense to the claim. The comments clearly assert that a formal pleading or charge is not necessary to invoke the lawyer's to respond.

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The comment to SDRPC 1.6 further clearly asserts that compliance with the orders of the court or tribunal of competent jurisdiction requires the lawyer to give information about the client.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald E. Covey". The signature is written in a cursive style with a large, prominent initial "D".

Donald E. Covey, Chairman
Ethics Committee