

## ADVISORY OPINION SERVICE EXPANDED

By

Michael J. Hoover, Director  
Minnesota Office of Lawyers Professional Responsibility

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Until summer, 1980, attorneys could receive advisory opinions from the Director's office simply by telephoning. In July, 1980, the advisory opinion service was completely suspended due to a shortage of personnel and an unprecedented backlog in disciplinary investigations.

The suspension of the advisory opinion service created much consternation in the bar. In an attempt to balance the perceived need of the bar for an advisory opinion service with the still limited resources of the Director's office, I announced in this column the partial resumption of the advisory opinion service in October, 1982. As partially restored, the advisory opinion service permitted lawyers to make written requests for written advisory opinions from the Director's office.

While the written advisory opinion service was welcomed, we still heard frequent comments that there is a real need for a telephone advisory opinion service. Proponents argued that there are emergencies which require speedy consultation and responses. This and other arguments were raised again at the Minnesota State Bar Association convention when additional funding for the Lawyers Board was debated by the House of Delegates.

There is still a considerable backlog of incomplete disciplinary investigations. We also know from experience that the resource commitment necessary for a telephone advisory system is substantially greater than that which has been committed to the limited written advisory opinion service available for the last two years.

I am satisfied that the bar appreciates the fiscal consequences of restoring a telephone advisory opinion service. I also believe that the bar understands that to the extent greater economic resources are not provided, a telephone advisory service may mean that disciplinary resources must be diverted to the advisory opinion service, thereby lengthening the time in which complaints of unprofessional conduct are unresolved. Finally, we are aware that the pending submission of the Minnesota Rules of Professional Conduct to the supreme court may well increase the need for advice, if and when the rules are promulgated by the court.

Accordingly, I presented a plan for the resumption of a telephone advisory service to the Board on September 7, 1984. The Board has approved the plan, and it will be implemented effective November 1, 1984.

Under the plan, both written and telephone advisory opinions will be available to all Minnesota judges and lawyers who are not delinquent in the payment of their attorney registration fees. Advisory opinions will not be rendered to those who are suspended for non-payment of attorney registration fees

because those fees fund the operation of the Director's office and make possible this and other services rendered by the Director's office to the bar.

To make a written request for an advisory opinion, an attorney should write the Director's office. The letter should set forth the facts, the authorities consulted by the requesting lawyer, and the questions or issues which the requestor desires resolved in the advisory opinion. Normally, we hope to issue written responses to such requests within three weeks.

Telephone requests for advisory opinions may be made by calling the Director's office (612-296-3952) and asking for the advisory opinion attorney. The caller will be asked for his or her name, address, and telephone number. Advisory opinions will not be given to persons who fail to identify themselves.

The caller will be asked to describe briefly the factual setting giving rise to the request for an opinion. They will also be asked to cite the particular provisions of the code which they have identified as relevant to their inquiry, and to identify the specific questions or issues needing resolution.

If the question asked is one which is routinely and frequently answered by the Director's office, an immediate answer may be given. We anticipate that immediate answers will be available in a majority of the cases. In some cases, however, callers may not receive an immediate response to a telephone advisory opinion request. Some questions may be too complex or difficult to render an immediate answer. In such cases, the caller will be so advised and an attempt will be made to do the necessary research and respond orally within 24 hours. In a limited number of cases, the supervisory attorney may determine that the request is simply too complex for any telephone opinion, and the caller may be asked to send in a written request for an opinion.

We know from experience that many of the advisory opinion requests are easily resolvable by consulting the Code of Professional Responsibility. We therefore strongly urge that before requesting any opinion, the attorney consult the code to determine whether the answer is readily apparent.

We also know from experience that it is important to maintain accurate records of the opinions requested and the advice given. Therefore, as mentioned above, we will not render opinions to persons who fail to identify themselves. In cases of written requests, our written response will stand as a confirmation of the advice given. In cases of telephone advisory opinion requests, the opinion will either be confirmed in writing or an internal memorandum will be kept by the Director's office concerning the request and the opinion given.

Requestors must also understand that this service is an attempt to be helpful to the bar. Lawyers giving advisory opinions, however, are not infallible, and all advisory opinion requests, whether in writing or by telephone, are subject to the following disclaimer:

All advisory opinions are limited to the facts as provided by the requestor. Different or omitted facts may render the opinion inappropriate or erroneous. The Director's office is not responsible for the application of the opinion to differing factual situations. All opinions are the personal opinion of the issuing attorney. Advisory opinions should not be interpreted as binding the Minnesota Supreme Court, the Lawyers Professional Responsibility Board, or the Director's office in any disciplinary proceeding.

Several years ago when we partially reinstated the advisory opinion service, we also announced

certain limitations which continue in effect. Under these limitations, the Director may decline to issue opinions in the following circumstances:

1. Where the facts or legal issues involved are very complex and would require an unreasonable commitment of resources.
2. Where the opinion would require resolution of questions concerning substantive law outside the area of legal ethics and discipline.
3. Where the opinion would require the Director's office to opine about conduct which has already occurred.
4. Where the request seeks an opinion about the conduct of another lawyer.
5. Where the request seeks an opinion about non-lawyer conduct, except where the non-lawyer is under the control of the inquiring lawyer (*e.g.*, a law clerk or legal assistant).
6. Where the opinion request concerns advertising and solicitation.
7. Where, in the exercise of professional judgment, the Director's office believes its legal interests could be jeopardized by answering the inquiry.

During the past two years, we have answered numerous written requests for advisory opinions. I am confident that the expansion of this service to encompass telephone requests will enable more attorneys to benefit from the advice available. I would also welcome your comments concerning your actual experiences with the advisory opinion service once it is implemented in expanded form beginning in November.