

Advisory Opinions, What are They?

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In addition to its role investigating and prosecuting attorney disciplinary cases, the Office of Lawyers Professional Responsibility (the Director's office) has an equal, if not greater, role in educating lawyers about the ethical practice of law.

The Director's office attempts to fulfill this second role through various outreach efforts, including presentations at seminars, authoring articles for various legal publications (such as the one you are reading) and the lawyer advisory opinion service.

Most lawyers have probably experienced a situation where they perceive a possible ethical problem, but are uncertain as to the exact nature of the problem or what to do about it.

Advisory opinions are available to Minnesota lawyers to assist them in answering those questions and offering them suggestions on how to proceed. For example, let's say you are approached by one of the parties to a potential dissolution. She knows you because her husband previously consulted with you regarding child support issues arising from his first marriage. Intuitively you recognize the potential for problems if you choose to represent the wife. However, you may not be sure of the relevant rule of professional conduct or, having consulted the rule, you are not sure of its applicability to your situation.

A call to the Director's office requesting an advisory opinion would result in your speaking to one of the staff lawyers. He or she would discuss the relevant facts with you, direct you to the applicable rule in the Minnesota Rules of Professional Conduct, and offer you advice on how to proceed.

In the situation described, the staff lawyer would discuss Rule 1.9, which deals with representations adverse to former clients, and request additional information about your situation. For example, what was the nature of the prior relationship with the husband? Did you actually represent the husband, or did he simply contact you about the possibility of your representing him? Armed with that information the Director's office would give you an opinion as to how to proceed.

While many lawyers find the advisory opinion service helpful, there are limitations on the service.

First, the advisory opinion service is not a method to find out whether other lawyers are engaging in unprofessional conduct. In other words, the Director's office will not provide an advisory opinion regarding the conduct of opposing counsel. If you believe that another lawyer has engaged in unprofessional conduct the appropriateness of that lawyer's conduct can only be addressed through the complaint process.

Second, the advisory opinion service is not a means to determine if your past conduct violated a rule of professional conduct. The purpose of advisory opinions is to assist lawyers in conforming their conduct to the professional standards. Opinions concerning past behavior could conflict with the office's responsibility to investigate violations of the rules of conduct.

Third, the Director's office may decline to offer an opinion if the matters are too complex.

Finally, the reliability of advisory opinions is entirely dependant on the facts provided by the caller. Incomplete or inaccurate information can compromise the opinion and, in certain circumstances, render the opinion worthless. Callers seeking an opinion they can rely on should be vigilant in disclosing facts, both good and bad.

Advisory opinions are available to all licensed Minnesota lawyers and may be obtained by telephoning the Director's office. Indicate that you are seeking an advisory opinion. While you will be asked for your name, the opinions given are confidential. If your request involves a particularly complex set of facts or legal issues, you may make your request in writing. However, most questions are effectively dealt with in a telephone call.