

## ADVISORY OPINIONS CAN PREVENT TROUBLE

by  
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Confused? Don't know what to do? Is your practice starting to sound like the facts in a law school exam on professional responsibility? Fear not. Help is available.

The Office of Lawyers Professional Responsibility offers advisory opinions on professional responsibility issues to licensed Minnesota attorneys and judges. Last year we provided over 1,500 advisory opinions. The issues opined upon ranged from what to do with disputed funds held in a trust account to complex conflicts of interest to attorneys liens to how to deal with difficult clients, opposing counsel and judges.

Advisory opinions may be obtained by phone or in writing. Most situations can easily be dealt with over the phone. The number to call is 651-296-3952. Tell the receptionist that you are looking for an advisory opinion.

You will be asked to give your name and address for our records. Don't worry about this. We keep records of the advisory opinion calls and retain the notes of what was discussed. We are not trying to trap you. We consider the advisory opinions to be confidential and have never commenced a disciplinary investigation based upon information received from an advisory opinion caller. The service is intended to be an aid to practitioners, not a confession that results in a penance imposed.

### **some limits**

There are limitations on the advisory opinion service. Opinions as to past conduct will not be given. We may, however, point out a relevant rule or two for you to consider next time you find yourself in the same situation.

Opinions as to third-party conduct are not given.

We know that you encounter unethical attorneys in your practice from time to time, but we cannot confirm your suspicions unless you file a complaint (*See* Rule 8.3, Minnesota Rules of Professional Conduct). As with past conduct, we may point out a rule or two that is implicated by the facts given.

We cannot give you opinions that require resolution of a question of substantive law outside the area of legal ethics and discipline. Although the attorneys in the office have a broad range of experience, our opinion on the application of the rule against perpetuities is no better than anyone else's.

We do not review for approval advertising copy, fee agreements or other proposed documents. We will, however, discuss with you the rules applicable to such things.

Sometimes the facts are too complex even for us. We reserve the right to decline giving an opinion if it will

require an unreasonable commitment of resources.

### **not binding**

Finally, and quite importantly, advisory opinions, whether written or oral, are not binding on the office, the board, or the court. So if the whole situation blows up in your face and a complaint is filed, it is not a defense to an ethics violation that you acted in accord with an advisory opinion. After all, the opinions are based upon brief conversations where only one version of the facts is considered. You do, however, get good faith points for at least trying to find out what was the right thing to do.

The advisory opinion service is something we are pleased to offer. We would much rather help see that the right thing is done in the first place than discipline attorneys for doing the wrong thing.

So, next time you find yourself wishing you hadn't skipped out of the ethics portion of that last seminar, give us a call.