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December 7, 1992

Re: Ethics Opinion 92-11

You have requested an opinion from this Committee concerning the propriety of an advertisement you intend to run.

FACTS

You are a licensed real estate broker in South Dakota. Pursuant to SDCL 36-21A-6(2) all persons who hold a valid real estate broker's license and who negotiate an offer or attempt to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real property in expectation of being compensated for the service are "real estate mortgage brokers." You contend that your practice of real estate law, coupled with the fact that you are a licensed real estate broker, makes you a real estate mortgage broker under South Dakota law. Accordingly, you sought to include in your advertisement the label "real estate mortgage broker," in addition to listing particular fields of law authorized by Rule 7.4.

OPINION

It is the opinion of this Committee that the reference to "real estate mortgage broker" in your advertisement is inappropriate as it is not one of the thirty-two category titles recommended by the Board of Bar Commissioners of the State Bar of South Dakota in the Comment to Rule 7.4. Rule 7.4 clearly contemplates that a lawyer's advertisement communicating that he or she does or does not practice in a particular field of law be limited to fields of law. This Committee does not believe that "real estate mortgage broker" is a field of law, particularly since it was not designated by the Board of Bar Commissioners as one of the recognized areas of practice. Even assuming that "real estate mortgage broker" is a field of law, this Committee is not willing to expand upon Rule 7.4

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to include an area of practice not recommended by the Board of Bar Commissioners. In either case, your proposed advertisement is inappropriate.

Best regards.

Sincerely,

BOYCE, MURPHY, McDOWELL & GREENFIELD

Michael S. McKnight
Chairman of Ethics Committee