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Re: Supplement to Ethics Opinion 92-10

Dear

Thank you for your letter dated January 25, 1993 concerning Ethics Opinion 92-10. In that opinion you pointed out to this Committee two South Dakota Supreme Court cases involving issues similar to that addressed in Ethics Opinion 92-10. See, Egan vs. Waggoner, 170 N.W. 142 (S.D. 1918); Davenport v. Waggoner, 207 N.W. 972 (S.D. 1926). Neither of these cases was cited in Ethics Opinion 92-10.

This Committee does not have the authority to overrule Supreme Court precedent. Upon review of Egan and Davenport by this Committee, it is still the opinion of this Committee that the response given in Ethics Opinion 92-10 represents the modern view on this issue under the Rules of Professional Conduct as adopted in South Dakota. Since the Egan and Davenport cases were decided, the State Bar of South Dakota and the South Dakota Supreme Court have adopted and repealed the Code of Professional Responsibility and adopted and approved of the Rules of Professional Conduct. It is the opinion of this Committee that Ethics Opinion 92-10 represents the modern view under the Rules and that Ethics Opinion 92-10 was correctly decided by this Committee.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee

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