

OPINIONS OF THE LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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OPINION NO. 1

THE LEGAL FORCE AND EFFECT OF OPINIONS ISSUED BY THE STATE BOARD OF PROFESSIONAL RESPONSIBILITY

It is the policy of the State Board of Professional Responsibility to issue, from time to time, advisory opinions as to the professional conduct of lawyers, whether as a result of a specific request or its own initiative, on matters deemed important by the Board.

The Board and the Supreme Court consider these opinions as rule interpretations that guide attorneys' professional conduct even though they are not binding on the Court. *See, In re Admonition Issued in Panel File No. 99-42*, 621 N.W.2d 240 (Minn. 2001).

Opinions issued by the Board will be subject to change from time to time as deemed necessary by the Board, or as required by decisions of the Minnesota Supreme Court.

Adopted: October 27, 1972.

Amended: December 4, 1987; and
January 26, 2006.

Related authorities and other resources: [Rule 4\(c\), Rules on Lawyers Professional Responsibility](#).

OPINION NO. 2

DEFENSE OF CRIMINAL CASES BY A COUNTY ATTORNEY

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated in [Comment 1 of Rule 1.11, Minnesota Rules of Professional Conduct \(Oct. 2005\)](#).

OPINION NO. 3
PRACTICE OF LAW BY PART-TIME JUDGES

Repealed: October 25, 2002
[Click here to view repealed opinion.](#)

Related authorities and other resources: Repeal of Opinion explained in [Minnesota Lawyer, Dec. 2, 2002, p. 2](#). Code of Judicial Conduct, Section A of the compliance requirements.

OPINION NO. 4
WITHDRAWAL FOR NON-PAYMENT OF FEES

Repealed: October 25, 2002
[Click here to view repealed opinion.](#)

Related authorities and other resources: Repeal of Opinion explained in [Minnesota Lawyer, Dec. 2, 2002, p. 2](#). Rule 105, Minnesota General Rules of Practice for the District Courts; Rule 83.7, Local Rules of the United States District Courts for the District of Minnesota.

OPINION NO. 5
FAILURE TO COMPLY WITH FEE ARBITRATION DECISION

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated into [Rule 8.4\(i\), Minnesota Rules of Professional Conduct \(Oct. 2005\)](#).

OPINION NO. 6
DEFENSE OF CRIMINAL CASES BY MUNICIPAL ATTORNEYS

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated in [Comment 1 of Rule 1.11, Minnesota Rules of Professional Conduct \(Oct. 2005\)](#).

OPINION NO. 7
INDEBTEDNESS INCURRED FOR PROFESSIONAL SERVICES
ON BEHALF OF CLIENTS

Repealed: January 7, 1983
[Click here to view repealed opinion.](#)

Related authorities and other resources: Repeal of opinion explained in [Minnesota Bench & Bar, July 1997 at p.16](#); *Minnesota Bench & Bar*, March 1983 at p. 35.

OPINION NO. 8
ATTORNEYS' GUIDELINES FOR
LAW OFFICE SERVICES BY NON-LAWYERS

Except to the extent permitted by the Supreme Court of the State of Minnesota, (e.g., Student Practice Rules) neither law students nor any other person not duly admitted to the practice of law shall be named on pleadings under any identification.

Legal assistants, or other paralegal employees, may be listed on professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, so long as the paralegals are clearly identified as such, and so long as no false, fraudulent, misleading, or deceptive statements or claims are made concerning said paralegals, their legal status and authority, or their relationships to the firms by which they are employed. Paralegals may use business cards so identifying themselves, which cards carry the law firm's name and address.

Such a paralegal, so identified, may sign correspondence on behalf of the law firm, provided he or she does so by direction of an attorney-employer.

Non-lawyers must be supervised by an attorney who is responsible for their work. *See*, Rules 5.3 and 5.5 and Comments, Minnesota Rules of Professional Conduct.

Adopted: June 26, 1974.
Amended: June 18, 1980;
December 4, 1987; and
January 26, 2006.

OPINION NO. 9
MAINTENANCE OF BOOKS AND RECORDS

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Pursuant to Rule 1.15(i), Minnesota Rules of Professional Conduct (Oct. 2005), is now [Appendix 1 to 2005 Minnesota Rules of Professional Conduct](#). Brochures entitled: [Instructions for Using Quicken 5.0 with Windows 95 or Windows 3.1 for Maintaining, Balancing and Reconciling Minnesota Lawyer Trust Accounts](#); and [Other People's Money](#) available from the Office of Lawyers Professional Responsibility; *In re Isaacs*, 451 N.W.2d 209 (Minn. 1990).

OPINION NO. 10
DEBT COLLECTION PROCEDURES

Repealed: October 25, 2002
[Click here to view repealed opinion.](#)

Related authorities and other resources: Repeal of Opinion explained in [Minnesota Lawyer, Dec. 2, 2002, p. 2.](#) *In re DeVinney*, 255 N.W.2d (Minn. 1977).

OPINION NO. 11
ATTORNEYS' LIENS

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated into [Rule 1.16\(g\), Minnesota Rules of Professional Conduct \(Oct. 2005\).](#)

OPINION NO. 12
TRUST ACCOUNT SIGNATORIES

Repealed: January 26, 2006
[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated into [Rule 1.15\(j\), Minnesota Rules of Professional Conduct \(Oct. 2005\)](#); Brochure entitled [Other People's Money](#) available from the Office of Lawyers Professional Responsibility.

OPINION NO. 13
COPYING COSTS OF CLIENT FILES, PAPERS AND PROPERTY

Client files, papers and property, whether printed or electronically stored, shall include:

1. All papers and property provided by the client to the lawyer.
2. All pleadings, motions, discovery, memorandums, and other litigation materials which have been executed and served or filed regardless of whether the client has paid the lawyer for drafting and serving and/or filing the document(s).
3. All correspondence regardless of whether the client has paid the lawyer for drafting or sending the correspondence.
4. All items for which the lawyer has advanced costs and expenses regardless of whether the client has reimbursed the lawyer for the costs and expenses including depositions, expert opinions and statements, business records, witness statements, and other materials which may have evidentiary value.

Client files, papers and property, whether printed or electronically stored, shall not include:

1. Pleadings, discovery, motion papers, memoranda and correspondence which have been drafted, but not sent or served if the client has not paid for legal services in drafting or creating the documents.
2. In non-litigation settings, client files, papers and property shall not include drafted but unexecuted estate plans, title opinions, articles of incorporation, contracts, partnership agreements, or any other unexecuted document which does not otherwise have legal effect, where the client has not paid the lawyer for the services in drafting the document(s).

A lawyer who has withdrawn from representation or has been discharged from representation, may charge a former client for the costs of copying or electronically retrieving the client's files, papers and property only if the client has, prior to termination of the lawyer's services, agreed in writing to such a charge. Such copying charges must be reasonable. Copying charges which substantially exceed the charges of a commercial copy service are normally unreasonable.

A lawyer may not condition the return of client files, papers and property on payment of copying costs. Nor may the lawyer condition return of client files, papers or property upon payment of the lawyer's fee. *See* Rule 1.16(g), Minnesota Rules of Professional Conduct.

A lawyer may withhold documents not constituting client files, papers and property until the outstanding fee is paid unless the client's interests will be substantially prejudiced without the documents. Such circumstances shall include, but not necessarily be limited to, expiration of a statute of limitations or some other litigation imposed deadline. A lawyer who withholds documents not constituting client files, papers or property for nonpayment of fees may not assert a claim against the client for the fees incurred in preparing or creating the withheld document(s).

Adopted: June 15, 1989.

Amended: January 22, 2010.

Related authorities and other resources: Minnesota Statutes §481.13 and §481.14; and [Minnesota Bench & Bar, August 1989 at p. 11.](#)

OPINION NO. 14
ATTORNEY LIENS ON CLIENT HOMESTEADS

Repealed: April 4, 2003

[Click here to view repealed opinion.](#)

Related authorities and other resources: [Minnesota Bench & Bar, August 1990 at p. 13,](#) [Minnesota Bench & Bar, November 1982 at p. 25.](#)

OPINION NO. 15
ADVANCE FEE PAYMENTS AND AVAILABILITY OR
NON-REFUNDABLE RETAINERS

Repealed: January 26, 2006

[Click here to view repealed opinion.](#)

Related authorities and other resources: Incorporated into [Rules 1.5\(b\) and 1.15\(c\), Minnesota Rules of Professional Conduct \(Oct. 2005\)](#); Brochure entitled [Other People's Money](#) available from the Office of Lawyers Professional Responsibility; [Minnesota Bench & Bar, November 1991 at p. 11.](#)

OPINION NO. 16
INTEREST AND LATE CHARGES ON ATTORNEYS FEES

Repealed: October 25, 2002
[Click here to view repealed opinion.](#)

Related authorities and other resources: Repeal of Opinion explained in [Minnesota Lawyer, Dec. 2, 2002, p. 2.](#) [Minnesota Bench & Bar, October 1989 at p. 18;](#) Yilek, "Interest and Late Charges: How to Charge Clients," [Minnesota Bench & Bar, March 1991 at p. 18.](#)

OPINION NO. 17
ACCEPTING GRATUITIES FROM COURT REPORTING SERVICES
AND OTHER SIMILAR SERVICES

A lawyer ought not to accept, or to permit any nonlawyer employee to accept, a gratuity offered by a court reporting service or other similar service for which a client is expected to pay unless the client consents after consultation. However, a lawyer may accept nominal gifts, such as pens, coffee mugs, and other similar advertising-type gifts without consent of the client. *See* Rules 1.4, 1.5(a), 1.8(f)(1) and 5.3, Minnesota Rules of Professional Conduct (MRPC). *See also* Rule 1.0(c), MRPC.

Adopted: June 18, 1993.

Amended: January 26, 2006.

Related authorities and other resources: [Minnesota Bench & Bar, August 1993 at p. 14;](#) ABA Informal Opinion 278 (undated); and Alabama Bar Opinion RO-89-83 (1989).

OPINION NO. 18
SECRET RECORDINGS OF CONVERSATIONS

Repealed: April 18, 2002
[Click here to view repealed opinion.](#)

Related Authorities and other resources: Repeal of opinion explained in [Minnesota Lawyer, June 3, 2002.](#) [Minnesota Bench & Bar, Nov/Dec 1996 at p.19.](#)

OPINION NO. 19
USING TECHNOLOGY TO COMMUNICATE
CONFIDENTIAL INFORMATION TO CLIENTS

A lawyer may use technological means such as electronic mail (e-mail) and cordless and cellular telephones to communicate confidential client information without violating Rule 1.6, Minnesota Rules of Professional Conduct (MRPC). Such use is subject to the following conditions:

1. E-mail without encryption may be used to transmit and receive confidential client information;
2. Digital cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information when used within a digital service area;
3. When the lawyer knows, or reasonably should know, that a client or other person is using an insecure means to communicate with the lawyer about confidential client information, the lawyer shall consult with the client about the confidentiality risks associated with inadvertent interception and obtain the client's consent.

Adopted: January 22, 1999.

Amended: January 22, 2010.

Comment

A lawyer may not knowingly reveal a confidence or secret of a client. Rule 1.6(a). A lawyer should exercise care to prevent unintended disclosure. *See* Comment to Rule 1.6. For example, the lawyer should avoid professional discussions in the company of persons to whom the attorney-client privilege does not extend. *Id.* Similarly, a lawyer should take reasonable steps to prevent interception or unintended disclosure of confidential communications. All communication carries with it some such risk, for example by eavesdropping, wiretapping, or theft of mail. The precautions to be taken by a lawyer depend on the circumstances, including the sensitivity of the information, the manner of communication, the apparent risks of interception or unintended disclosure, and the client's wishes.

The purpose of this opinion is to address concerns that certain devices or methods may not be used by lawyers to communicate client confidences or secrets because they do not guarantee security. The committee believes absolute security is not required, and that the use of new technology is subject to the same analysis as the use of more traditional methods of communication.

This opinion reflects the prevalent view of other states and technology experts, that communications by facsimile, e-mail, and digital cordless or cellular phones, like those by mail and conventional corded telephone, generally are considered secure; their interception involves intent, expertise, and violation of federal law. Some states have required client consent or encryption for the use of e-mail, but the majority of recent state ethics opinions

sanction the use of e-mail without such requirements. The committee finds the reasoning of the latter opinions persuasive.

The opinion intentionally omits facsimile machines, which typically transmit data over conventional telephone lines. With facsimile machines, the concerns are less with interception than with unintended dissemination of the communication at its destination, where the communication may be received in a common area of the workplace or home and may be read by persons other than the intended recipient. The Director has received client complaints involving such situations and cautions lawyers to take reasonable precautions to prevent unintended dissemination. Similar concerns may be raised by voice-mail and answering machine messages.

OPINION NO. 20
USE OF THE WORD “ASSOCIATES”
IN A LAW FIRM NAME

The use of the word “Associates” or the phrase “& Associates” in a law firm name, letterhead or other professional designation is false and misleading if the use conveys the impression the law firm has more attorneys practicing law in the firm than is actually the case.

Comment

Subject to qualifications below, the use of the word “Associates” in a law firm name, letterhead or other professional designation—such as “Doe Associates”—is false and misleading if there are not at least two licensed attorneys practicing law with the firm. Similarly, the use of the phrase “& Associates” in a firm name, letterhead or other professional designation—such as “Doe & Associates”—is false and misleading if there are not at least three licensed attorneys practicing law with the firm.

Rule 7.5(a), Minnesota Rules of Professional Conduct (“MRPC”), states:

A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it . . . is not otherwise in violation of Rule 7.1.

Comment 1 to Rule 7.5, MRPC, states, in pertinent part, that “the use of trade names . . . is acceptable so long as it is not misleading.”

Rule 7.1, MRPC, states:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment 2 to Rule 7.1, MRPC, provides:

Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

While the word "Associates" and the phrase "& Associates" undoubtedly have other meanings and connotations in other contexts, in the practice of law the word and the phrase have been used and are perceived as referring to an attorney practicing law in a law firm. *See In re Sussman*, 405 P.2d 355, 356 (Or. 1965) ("Principally through custom the word ["associates"] when used on the letterheads of law firms has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of law the use of the word to describe lawyer relationships other than that of employer-employee is likely to be misleading."); St. B. of N.M. Ethics Advisory Comm., Formal Op. 2006-1 (2006) ("It is well accepted in the legal community that an 'associate' is an attorney that works for a firm. 'Associates,' at least in the legal context, do not include support staff such as legal assistants or investigators."); Ass'n of the B. of the City of N.Y. Comm. on Prof'l & Jud. Ethics, Formal Op. 1996-8 (1996), 1996 WL 416301 ("[T]he term ['associate'] has been interpreted by courts and other ethics committees to mean a salaried lawyer-employee who is not a partner of a firm."); Utah St. B. Ethics Advisory Op. Comm., Op. 04-03 (2004), 2004 WL 1304775 ("We believe that, if a member of the public examined a firm name such as 'John Doe & Associates,' he would conclude that John Doe works regularly with at least two other lawyers.").

While some members of the public may care little about the number of attorneys practicing law at a law firm, clearly some members of the public seeking legal counsel do care whether there is more than one attorney at a firm available to provide legal services. "A client may wish to be represented by a law firm comprised of several or many lawyers, and the implications of the law firm name may affect the client's decision. Any communication that suggests multiple lawyers creates the appearance that the totality of the lawyers of the law firm could and would be available to render legal counsel to any prospective client" Cal. St. B. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 1986-90 (1986), 1986 WL 69070 (opining that solo practitioners may not ethically advertise using a group trade name such as "XYZ Associates" unless the advertisement affirmatively discloses they are solo practitioners). A law firm name which suggests there are multiple attorneys to service a client's needs when there is only one attorney is inherently misleading.

The Board's opinion is consistent with decisions and ethics opinions from other jurisdictions which have held that the use of "associates" in the name of a law firm with one practicing lawyer is false and misleading. *See, e.g., In re Mitchell*, 614 S.E.2d 634 (S.C. 2005) (holding a solo practitioner made false and misleading communications by using the word "associates" in his firm name); *In re Brandt*, 670 N.W.2d 552, 554-55

(Wis. 2003) (solo practitioner holding himself out as “Brandt & Associates” was in violation of ethics rule prohibiting false and misleading communications); *Portage County B. Ass’n v. Mitchell*, 800 N.E.2d 1106 (Ohio 2003) (solo practitioner engaged in misleading conduct by holding himself out as “Mitchell and Associates”); *Office of Disciplinary Counsel v. Furth*, 754 N.E.2d 219, 224, 231 (Ohio 2001) (a solo practitioner’s use of letterhead referring to his firm as “Tom Furth and Associates, Attorneys & Counselors at Law” was misleading); S.C. B. Ethics Advisory Comm., Op. 05-19 (2005), 2005 WL 3873354 (opining that a solo practitioner’s use of a firm name such as “John Doe and Associates, P.A.” is misleading); Utah St. B. Ethics Advisory Op. Comm., Op. 138 (1994), 1994 WL 579848 (“[A] sole practitioner may not use a firm name of the type ‘Doe & Associates’ if he has no associated attorneys, even if the firm formerly had such associates or employs one or more associated nonlawyers such as paralegals or investigators.”).

The use of “Associates” or “& Associates” in a firm name, letterhead or other professional designation by lawyers who share office space or who associate with other lawyers on a particular legal matter but who do not otherwise practice together as a law firm is false and misleading.

Whether or not a law firm name using the word “Associates” or the phrase “& Associates” is false and misleading will depend on the particular facts and circumstances of each case. For example, there may be circumstances where three attorneys with a law firm name such as “Doe & Associates” may lose one of the firm’s attorneys. In that event, if another attorney joins the firm within a reasonable period of time thereafter, or if the firm reasonably and objectively anticipates another attorney joining the firm within a reasonable period of time, it is not false or misleading for the firm to continue using “& Associates” in its name during the interim period. If neither circumstance exists, the continued use of “& Associates” would be considered false and misleading. In addition, there may be circumstances where one or more of the attorneys practicing with a firm may be working part-time. As long as the requisite minimum number of attorneys, part-time or otherwise, regularly and actively practice with the firm, the use of “Associates” or “& Associates” would not be considered false or misleading.

The proper use of “Associates” or “& Associates” in a firm name, letterhead or other professional designation previously has not been the subject of guidance from the Board. Therefore, the Office of Lawyers Professional Responsibility will defer invoking this opinion in disciplinary proceedings under Rules 7.1 and 7.5, MRPC, until January 1, 2010. For the same reason, to the extent a lawyer has already contracted for an advertisement or other promotional material using a name contrary to Opinion No. 20, the continued availability of the advertisement or other material for the duration of the contract term should not be the basis for discipline.

Adopted: June 18, 2009.

OPINION NO. 21
A LAWYER’S DUTY TO CONSULT WITH A CLIENT
ABOUT THE LAWYER’S OWN MALPRACTICE

A lawyer who knows that the lawyer's conduct could reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's interests has one or more duties to act under the Minnesota Rules of Professional Conduct. The requirements of Rules 1.4 and 1.7 are implicated in such a circumstance and the lawyer must determine what actions may be required under the Rules, with particular attention to Rules 1.4 and 1.7.

Since the possibility of a malpractice claim that arises during representation may cause a lawyer to be concerned with the prospect of legal liability for the malpractice, the provisions of Rule 1.7 dealing with a "concurrent conflict of interest" must be considered to determine whether the personal interest of the lawyer poses a significant risk that the continued representation of the client will be materially limited.¹ Under Rule 1.7 the lawyer must withdraw from continued representation unless circumstances giving rise to an exception are present.² Assuming continued representation is not otherwise prohibited, to continue the representation the lawyer must reasonably believe he or she may continue to provide competent and diligent representation.³ If so, the lawyer must obtain the client's "informed consent," confirmed in writing, to the continued representation.⁴ Whenever the rules require a client to provide "informed consent," the lawyer is under a duty to promptly disclose to the client the circumstances giving rise to the need for informed consent.⁵ In this circumstance, "informed consent" requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the continued representation.⁶

Regardless of whether the possibility of a malpractice claim creates a conflict of interest under Rule 1.7, the lawyer also has duties of communication with the client under Rule 1.4 that may apply. When the lawyer knows the lawyer's conduct may reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's interests, the lawyer shall inform the client about that conduct to the extent necessary to achieve each of the following objectives:

- 1) keeping the client reasonably informed about the status of the representation,⁷
- 2) permitting the client to make informed decisions regarding the representation,⁸
- 3) assuring reasonable consultation with the client about the means by which the client's objectives are to be accomplished.⁹

Comment

¹ Rule 1.7(a)(2).

² Rule 1.7(a).

³ Rule 1.7(b)(1) and (2).

⁴ Rule 1.7(b)(4).

⁵ Rule 1.4(a)(1).

⁶ Rule 1.0(f).

⁷ Rule 1.4 (a)(3).

⁸ Rule 1.4 (b).

⁹ Rule 1.4 (a)(2).

The issue of when and what to say to a client when a lawyer knows that the lawyer's conduct described in Opinion 21 could reasonably be expected to be the basis for a malpractice claim is difficult and may create inherent conflicts. The Board is issuing Opinion No. 21 to apprise the Bar of the Board's position on the matter and to provide guidance to lawyers who may confront the issue.

In consulting with the current client about the possible malpractice claim, the lawyer should bear in mind Comment 5 to Rule 1.4, which provides that "[t]he guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation."

Other jurisdictions have recognized a lawyer's ethical duty to disclose to the client conduct which may constitute malpractice. *See, e.g., Tallon v. Comm. on Prof'l Standards*, 447 N.Y.S.2d 50, 51 (App. Div. 1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him."); Colo. B. Ass'n Ethics Comm., Formal Op. 113 (2005) ("When, by act or omission, a lawyer has made an error, and that error is likely to result in prejudice to a client's right or claim, the lawyer must promptly disclose the error to the client."); Wis. St. B. Prof'l Ethics Comm., Formal Op. E-82-12 ("[A]n attorney is obligated to inform his or her client that an omission has occurred which may constitute malpractice and that the client may have a claim against him or her for such an omission."); N.Y. St. B. Ass'n Comm. on Prof'l Ethics, Op. 734 (2000), 2000 WL 33347720 (Generally, an attorney "has an obligation to report to the client that [he or she] has made a significant error or omission that may give rise to a possible malpractice claim."); N.J. Sup. Ct. Advisory Comm. on Prof'l Ethics, Op. 684 ("The Rules of Professional Conduct still require an attorney to notify the client that he or she may have a legal malpractice claim even if notification is against the attorney's own interest.").

In re SRC Holding Corp., 352 B.R. 103 (Bankr. D. Minn. 2006), aff'd in part and rev'd in part *In re SRC Holding Corp.*, 364 B.R. 1 (D. Minn. 2007), reversed *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009) discuss certain matters addressed in Opinion 21. In *Leonard*, the Eighth Circuit held that the bankruptcy court had relied too heavily on ethics rules in determining whether the law firm had violated a legal duty to consult with its client about the law firm's possible malpractice. The Eighth Circuit said "[d]emonstrating that an ethics rule has been violated, by itself, does not give rise to a cause of action against the lawyer and does not give rise to a presumption that a legal duty has been breached." 553 F.3d 628. In predicting how the Minnesota Supreme Court would rule on an attorney's legal duty to consult with a client about the law firm's possible malpractice, the Eighth Circuit did not opine on a law firm's ethical duties to consult about such a claim. Recognizing the distinction, this Opinion does not opine on a law firm's legal duties to consult about such a claim.

A lawyer's obligation to report a possible malpractice claim to the lawyer's client also is discussed in a local article written by Charles E. Lundberg, entitled *Self-Reporting Malpractice or Ethics Problems*, 60 Bench & B. of Minn. 8, Sept. 2003, and more recently and extensively in Benjamin P. Cooper's article, *The Lawyer's Duty to Inform*

His Client of His Own Malpractice, 61 Baylor L. Rev. 174 (2009) and Brian Pollock's article, *Surviving a Screwup*, 34 ABA Litig. Mag. 2, Winter 2008.

Adopted: October 2, 2009.