OPERATING RULES OF THE ETHICS COMMITTEE

I - Charter

A. To carry out the mandate of Article III of the State Bar Constitution:
". . . to foster and maintain and require on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct. . . .";
B. To review the Rules of Professional Conduct adopted by the Montana Supreme Court and recommend changes;
C. To provide advisory ethics opinions to the members of the State Bar and publish those of general interest; and,
D. To establish a central register of ethics opinions and other resource materials at the State Bar office in Helena.

II - Practical Scope of Activity

A. The Committee will provide formal and informal advisory opinions as well as verbal counsel in response to inquiries from members in good standing of the State Bar of Montana about the application of the Montana Rules of Professional Conduct to prospective conduct of lawyers.

1. Inquiries from non-lawyers are generally complaints from clients about the past conduct of their attorney or parties about the past conduct of opposing counsel. The inquiring party will be referred to the Commission on Practice where appropriate with a brief explanation of the limits of the committee's function.
2. Inquiries from out-of-state organizations seeking a "seal of approval" for marketing or referral programs which are proposed for implementation in Montana will generally be declined. Inquiries from members of the State Bar of Montana about prospective participation in such programs will be addressed.
3. Committee opinions will not address the conduct of members of the judiciary except as necessary in opining on the conduct of a practicing member of the bar.
4. Committee opinions will not be rendered on issues pendent to filed litigation.

B. Opinions of the Committee are not subject to appeal to or approval of the Trustees of the State Bar but may be reconsidered by the Committee at any time whether on request or *sua sponte.*
C. Opinions will be predicated on the Committee's interpretation of the Rules of Professional Conduct in effect in Montana at the time the opinion is published. Opinions rendered under prior versions of the Rules or Canons will remain in effect to the extent consistent with current standards and not expressly overruled or limited by more recent opinions.

III - Procedural Matters

A. The consent of a majority of the members of the Committee will be sufficient to support the promulgation and publication of an opinion of the Committee.

1. Failure of a member to object to the text of a draft opinion circulated for comment prior to publication within ten days of mailing will be deemed consent by that member to the content of that opinion and its publication as dealing with matters of "general interest."
2. A minority opinion in the form of a special concurrence or dissent may be included as part of any published opinion at the request of one or more members of the Committee with the requesting member or members being responsible for providing the text of the minority opinion for timely promulgation and publication with the majority opinion.

B. Opinion requests should be directed to Bar Counsel at the State Bar office in writing setting forth a complete statement of the facts that provide the basis for the request together with a summary of the research of issues presented that has been done by the requesting attorney including reference to particular Rules of Professional Conduct believed to be involved.

1. Bar Counsel will disseminate the opinion request to Committee members.
2. Bar Counsel will coordinate with Committee members and with the Committee's legal intern to prepare a draft opinion. The draft will be circulated to Committee members within a reasonable time from receipt of the opinion request.

C. Opinion requests and the identity of the requesting attorney will be kept confidential except when release is consented to by the requesting attorney or the requesting attorney or a member of that attorney's firm uses the opinion in his or her defense to subsequent disciplinary action.

D. Publication of opinions of the Committee shall include publication in the *Montana Lawyer*, the *ABA/BNA Lawyer's Manual on Professional Conduct,* and dissemination on the *MontLaw* on-line computer service. A master hard copy of the opinions of the Ethics Committee of the State Bar of Montana, with index, will be maintained at the State Bar office in Helena, including a computer disk containing the same material in Word Perfect or Microsoft Word format.

E. Informal advisory opinions may be rendered by a subgroup of the Committee in order that our response to lawyer inquiries be as timely as possible under the circumstances.

1. Informal opinions will represent the views of at least three members of the Committee on the inquiry received. Upon receipt of an inquiry, the Chair or Vice Chair of the Committee will appoint an ad hoc subgroup of three or four members, tailoring the subgroup's experience and areas of practice to the question presented.
2. An informal opinion may be expressed orally (but preferably in writing) to the requesting attorney but <u>must</u> be reduced to a written memorandum by a member of the subgroup which gives the informal opinion. The oral or written expression of an informal opinion <u>must</u> include a *caveat* advising the requesting attorney that it is advisory and represents the views of only a subgroup of the Committee and, accordingly, should not be regarded with the deference that a published opinion would. The written memorandum will be forwarded to Bar Counsel who will maintain a copy in the Committee files and circulate it to all members of the Committee for comment.
3. The informal opinion memorandum must include a summary of the request, the response given, the basic analysis which supports the response, and one or more broad subject index headings taken from the index of formal opinions to facilitate retrieval of the informal opinion whenever it may bear on subsequent informal opinions or published opinions.
4. If the informal opinion evokes significant criticism from the Committee, it will be clarified in writing to the requesting attorney as soon as possible.
5. If deemed to be of "general interest", an informal opinion may be elaborated upon and with the concurrence of a majority of the Committee published as an opinion of the Committee.

F. Verbal counsel concerning the Rules of Professional Conduct may be rendered orally by any member of the Committee to the extent the counselor is comfortable doing so. The counselor must include a caveat advising the requesting attorney that (a) the counsel is advisory; (b) represents the view of the member only and not the opinion of the Committee, and (c) should be given the same weight or deference as that of a peer consultation. The counselor shall keep a record of the advice given.

G. Bar counsel is available to the Committee and to members of the bar to coordinate resources, disseminate materials and information and assist in the promulgation of the Committee's opinions.

November 1, 1995.