

**ETHICS OPINION NUMBER 107
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 13, 1985
AMENDED APRIL 6, 2013**

FEES AND EXPENSES - Assuming that Miss. Code Ann. §71-3-63 (1972), does not prohibit such charges, an attorney may ethically charge his workers' compensation claimant-client for expenses incurred in the representation separate and apart from §71-3-63's limitation on legal fees not exceeding 25% of the total award.

The Ethics Committee of The Mississippi Bar has been asked for its opinion on the following question:

May an attorney who represents a claimant before the Mississippi Workers' Compensation Commission ethically charge his client for expenses (e.g., long distance telephone calls, travel expenses, and deposition costs) incurred in the representation separate and apart from any attorney's fee to which the attorney is entitled under the terms of his employment contract as approved by the Commission subject to the maximum amount of 25 % of the total award of compensation set by Miss. Code Ann. 71-3-63 (1972)?

Prior to responding to this opinion, the Committee notes that it may not render opinions on questions of law. Therefore, this opinion does not address the legal question raised by this request: does Miss. Code Ann. 71-3-63 (1972), prohibit the attorney's charging of, and/or the Commission's approval of, expenses separate and apart from the fee for legal services authorized by section 71-3-63. The applicable language in question is:

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five per centum (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by a superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in

the interest of justice, it shall be deemed conducive to approve contracts for attorney fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

In regarding this opinion, the Committee assumes for the sake of argument only that the proposed charge for expenses is construed not to be prohibited by law.

With this understanding, the Committee concludes that the attorney ethically may, and indeed must, charge his client for the expenses incurred in the representation. The controlling ethical command is stated by Rule 1.8(j) of the Mississippi Rules of Professional Conduct (MRPC) which states in full:

A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

Rule 1.8(e), MRPC, further provides:

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, or administrative proceedings, except that:

- (1) A lawyer may advance court costs and expenses of litigation, including but not limited to reasonable medical expenses necessary to the preparation of the litigation for hearing or trial, the repayment of which may be contingent on the outcome of the matter . . .

Therefore, subject to the previously noted limitations of this opinion the attorney may ethically charge his workers' compensation claimant-client for expenses incurred in the representation over and above the limitations contained in §71-3-63 on legal fees. Of course, the attorney should ensure that the client clearly understands this at the beginning of the representation.