**ETHICS OPINION NUMBER 150**
**OF THE MISSISSIPPI BAR**
**RENDERED JUNE 2, 1988**
**AMENDED APRIL 6, 2013**

**FIRM NAME – LETTERHEAD -** An attorney should not represent on firm letterhead or by other means of advertisement that he is licensed to practice law in Mississippi when in fact said attorney is an inactive member of The Mississippi Bar and as such is prohibited by statute from practicing law in Mississippi until he complies with the requirements for active status.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on the following facts:

> Attorney A practices patent and trademark law in a state other than the State of Mississippi. Attorney A has previously been an active member of the Mississippi Bar but is presently on inactive status by his own request. Attorney A would like to know whether or not he can hold himself out as being licensed and admitted to practice in Mississippi State Courts and in the United States District Court for the Northern District of Mississippi on the firm letterhead, in a legal directory such as the Martindale-Hubbel and in other advertising such as in the Yellow Pages in Mississippi. Attorney A also asks whether or not the fact that his firm's practice is limited to patent and trademark law has any effect on his ability to perform the above advertising.

We are asked today to examine the ethical responsibilities of an attorney who is an inactive member of the Mississippi Bar relative to communication to the public of that attorney's legal services and qualifications. In examining this issue, we must first turn to the bench mark rule found in the Mississippi Rules of Professional Conduct concerning information about legal services. Rule 7.1 titled "Communications concerning a lawyer's service" states in applicable part:

A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer's services. A communication is false, deceptive or misleading if it: (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or

implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; .

Thus, the ethical question we are faced with is whether or not being an inactive member of the Mississippi Bar while at the same time holding one's self out as "licensed and admitted to practice in Mississippi" falls into conduct proscribed in sub parts (a) and (b) of Rule 7.1. To answer that question, we must look at the statutory guidelines regarding inactive membership of the Mississippi Bar. Miss. Code Ann. 73-3-120 (Supp. 1987) defines the different categories of membership of the Mississippi State Bar as follows:

> Members of the (Mississippi State Bar) shall be divided into active and inactive membership classes which shall be defined as follows:
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> a. "active member" means any person admitted to practice law in this state and who is engaged in the practice of law in this state. Except as otherwise provided in 73-3-125, all active members shall be entitled to vote and hold office in the association.
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> b. "inactive member" means any member, in good standing, who is not engaged in the practice of law in this state. A person may, upon written request, be enrolled as an inactive member. Inactive member shall not be entitled to vote and hold office in the association.
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> As used in this section, the "practice of law" shall include any person holding himself out as a practicing attorney or occupying any position which he may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document or law.

The language sought to be used by the requesting attorney is that the attorney is "licensed and admitted to practice in the State of Mississippi." While it appears technically correct that the attorney was admitted to the Mississippi Bar, that attorney voluntarily requested inactive status of the Bar. By statute, the attorney is therefore ". . . not engaged in the practice of law in this state." The same statute further tells us that ". . . the practice of law shall include any person holding himself as a practicing attorney . . ." Since a layman could reasonably believe that being "licensed and admitted to practice in Mississippi" means that the attorney is presently able to

counsel on matters involving Mississippi law, when in fact said attorney is prohibited from such action, then the communication would be a material misrepresentation of fact and/or likely to create an unjustified expectation about results the lawyer can achieve, also prohibited by Rule 7.1. We therefore hold in today's opinion that the conduct set forth in the Statement of Facts is in violation of the Mississippi Rules of Professional Conduct and therefore unethical.

Since we have today determined that the requesting attorney's conduct in advertising that he is licensed and admitted to practice in the State of Mississippi when in fact he is an inactive member of the Bar is materially misleading, we have no need to render an opinion on the second portion of the request. We note in passing, however, that the Mississippi Rules of Professional Conduct 7.6(b)(1) do sanction an attorney's communication to the public that he or she is a "patent attorney" or words to that effect. The fact that a Mississippi attorney may represent to the public that he or she is a "patent attorney" has no effect on our ruling that the requesting attorney's proposed conduct is materially misleading and therefore prohibited.