

**ETHICS OPINION NUMBER 156
OF THE MISSISSIPPI BAR
ADOPTED DECEMBER 2, 1988
AMENDED APRIL 6, 2013**

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

(1) Is it ethical, and if so, under what circumstances, can a lawyer send out a client newsletter to his agricultural clients concerning rules and regulations, etc., on federal programs, bankruptcy, and other legally related fields.

(2) Is it ethical, and under what circumstances, may a lawyer hold, or be a part of, an educational seminar, either alone, or in conjunction with a lending institution, concerning FmHA guaranteed agricultural loans, requirement therefor, ideas on applications and how to obtain said loans, and any other related legal matters. Further, who can be invited to such a seminar and what form can the invitation take?

Newsletter

The Mississippi Rules of Professional Conduct do not specifically deal with the ethical propriety of publishing and distributing a newsletter; however, Rules 7.1, 7.2, 7.3, 7.4, and 7.5 would be applicable to such an activity.

Subject to the provisions of those rules; the Committee concludes that a lawyer may mail and distribute a newsletter to clients and to members of the general public concerning various legal matters. Such a newsletter should not contain information that is false, deceptive, or misleading; and under Rule 7.1, a newsletter would be 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 or (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. Additionally, a newsletter should not falsely state or imply that the distributing lawyer authored the newsletter when in fact he did not. See Alabama Ethics Opinion 86-27. A newsletter would also be subject to all of the provisions of Rule 7.2 on advertising. See also Rule 7.4 concerning communications about fields of practice.

We next turned to the question of to whom the newsletter may be sent. Although the request referred to a "client newsletter" and stated that it would be sent to the lawyer's "agricultural clients", it is not clear that the newsletter would be sent only to current clients. The Committee therefore assumes that the lawyer may also desire to send the newsletter to potential clients and other members of the general public. For many years, it has been permissible for a lawyer to initiate communications with clients concerning new developments in the law. See ABA Opinions 210 and 213. Recently, in Mississippi Ethics Opinion 146, this Committee allowed direct contact with and solicitation of potential clients through a firm brochure. That opinion concerned potential clients not known to need specific legal services. In *Shapero v. Kentucky Bar Association*, 486 U.S. 466 , 108 S. Ct. 1916, 100 L. Ed. 2d 475 (1988), however, the United States Supreme Court recently held that a state may not categorically prohibit lawyers from soliciting business for pecuniary gain by mailing truthful and non-deceptive letters to prospective clients known to the lawyer to need legal services. Thus, this Committee concludes that a newsletter complying with the Mississippi Rules of Professional Conduct may be distributed to clients, potential clients, and members of the general public, even if the lawyer knows that the recipients need specific legal services.

Educational Seminar

Education of the public about legal topics is desirable. For many years lawyers have participated in educational seminars. Many bar associations have approved participation by lawyers in seminars for lay persons on specific areas of the law. See, e.g., Maryland Ethics Opinions 81-36 and 86-48, New Jersey Ethics Opinion 548, Alabama Ethics Opinion 434, Illinois Ethics Opinions 81-29 and 81-30, Wisconsin Ethics Opinion 80-19, Ohio Ethics Opinion 36, Virginia Ethics Opinion 856, Massachusetts Ethics Opinion 86-3.

The Committee concludes that a lawyer may ethically hold, or participate in, an educational seminar on legal topics for clients, potential clients, and members of the general public. Although a lawyer is not prohibited from accepting employment generated from the seminar, he may not directly solicit business at the seminar from potential clients known to need specific legal services. The format and content of the seminar, together with any invitation for the seminar, should be dignified and comply with the requirements of Rules 7.1, 7.2, 7.3, 7.4, and 7.5 of the Mississippi Rules of Professional Conduct.