

**ETHICS OPINION NUMBER 163  
OF THE MISSISSIPPI BAR  
RENDERED JUNE 23, 1989  
AMENDED APRIL 6, 2013**

**ADVERTISING -- COMMUNICATIONS CONCERNING A LAWYER'S SERVICES** - In advertising her services, a lawyer shall not state, "No fee will be charged until your case is won" or "No recovery -- No Fee," or other words to that effect, when the lawyer intends some or all of her clients to pay, or reimburse her, for out-of-pocket expenses or costs regardless of the outcome of the matter, and when in the context used, such language would be misleading.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion on the following hypothetical facts, submitted by a member of the Mississippi State Bar:

Lawyer A desires to advertise his services in both the printed and television media. In his advertisements, Lawyer A desires to state that "No fee will be charged until your case is won," or "No recovery -- No fee:" or other words to that effect. The proposed advertisement does not mention expenses. The lawyer intends for some or all of his clients to pay, or reimburse the lawyer, for out-of-pocket expenses and costs regardless of the outcome of the matter.

This request poses two questions. First, does the failure to mention the proposed charge for "expenses" or "costs" make the proposed communication false, deceptive, or misleading? Second, is the reference to "until your case is won" likely to create unjustified expectations about results the lawyer can achieve?

The Mississippi State Bar has recognized that there are limits to the restrictions that can or should be made upon a lawyer's communications designed to apprise the public of available legal service. However, there are restrictions that may be and have been imposed. For example, Rule 7.1(a) of the Mississippi Rules of Professional Conduct (MRPC) prohibits advertising that constitutes "a false, deceptive or misleading communication about the lawyer or the lawyer's services. A communication is false, deceptive 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 . . . ." Rule 7.1(b), MRPC, prohibits advertising that creates an unjustified, false or misleading expectation about results the lawyer can achieve.

The proposed advertisement is actually or potentially misleading in two respects. First, the "no fee" and "no recovery -- no fee" statements are likely to give the potential client the mistaken impression that he or she will be charged nothing if the case is not won. The public is not likely to distinguish between "fee" on the one hand, and "expenses" or "costs" on the other. Indeed, the legal profession itself sometimes uses the words interchangeably or assumes them to have overlapping meanings.

Finally, the proposed statement, "No fee will be charged until your case is won," also may prompt an unjustified expectation that the lawyer is exceptionally successful in winning his or her cases. This statement, standing alone or in conjunction with the "no fee" statement, violates Rule 7.1(b), MRPC.