

**ETHICS OPINION NUMBER 225
OF THE MISSISSIPPI BAR
RENDERED APRIL 10, 1995
AMENDED APRIL 6, 2013**

CONFLICT OF INTEREST- An attorney may not enter into an agreement to provide legal services for a party on an annual fee basis if the court costs and expenses are to be absorbed by the attorney who submits the low bid.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion as to the following factual situation presented in the request for an Opinion:

A national client engaged in manufacturing has asked this office to submit a "bid" for the rendering of legal services and payment of litigation expenses on an annual basis for defending products liability actions. The bid would be based on historical data of the cost of payment of legal fees and litigation expenses over the past three years. The bid would cover both cases presently pending as well as new suits filed during the contract period. The proposed contract would provide that it would be the obligation of the successful bidder to pay as they occur, with certain exceptions, all expenses of litigation such as expert witness fees, deposition costs, cost of case specific testing (up to \$10,000.00), etc. If the amount included in the bid was not sufficient to defray all such litigation expenses, then the firm would have to pay these out of its own pocket.

The question posed and addressed by this Committee is whether an attorney may submit a bid for rendering legal services and payment of litigation expenses on an annual basis, with the caveat that if the bid is not sufficient to defray all such litigation expenses, that the firm will have to pay those expenses out of its own pocket.

Rule 1.7(b), the Mississippi Rules of Professional Conduct addresses the question wherein it is stated that:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

(1) the representation will not be adversely affected; and

(2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantages and risks involved.

This Committee is of the opinion that a "lawyer's own interest" is affected and could be limited if he submitted a low bid and was required to either incur substantial expenses that would have to be paid out of his own pocket, or forego taking essential action on the part of his client to avoid those costs.

The Committee recognizes that Rule 1.1 of the Mississippi Rules of Professional Conduct sets forth:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The Committee also recognizes that Rule 1.3 requires that the lawyer shall act "with reasonable diligence and promptness in representing a client," irrespective of the effect of a low bid on a matter which requires substantially more time and effort than anticipated.