

**ETHICS OPINION NUMBER 256
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 17, 2008
AMENDED APRIL 6, 2013**

ATTORNEY ADVERTISING – FEES - Mississippi Rules of Professional Conduct 7.1, 7.2 and 5.4 prohibit a lawyer or law firm from advertising that a client's legal fees will be shared with a charitable organization.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion of the following hypothetical situation.

Whether the Mississippi Rules of Professional Conduct permit an attorney to advertise that if a person who has been injured in a car wreck employs the firm as his/her attorney, part of the legal fees for any recovery will be donated to children's charities.

Mississippi Rule of Professional Conduct 7.1 provides, in pertinent part:

A lawyer shall not make or permit to be made a false, misleading, deceptive or unfair communication about the lawyer or lawyer's services. A communication violates this rule if it:

(b) Creates an unjustified, false or misleading expectation about results the lawyer can achieve,

or

(d) Compares the lawyer's services with other lawyers' services unless the comparison can be factually justified.

Mississippi Rule of Professional Conduct 7.2 provides, in pertinent part:

(i) The lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or a written or recorded communication permitted by these Rules and may pay the usual charges of a lawyer referral service or to other legal service organization.

Mississippi Rule of Professional Conduct 5.4 provides, in pertinent part: (a) A lawyer or law firm shall not share legal fees with a non-lawyer ...

The advertising rules contained in the Mississippi Rules of Professional Conduct seek to balance the needs of the public, the lawyer, and our system of justice. *See* Comment to Miss. R. Prof. Conduct 7.2. Rule 7.2(a) explicitly acknowledges that “[a]n advertisement is an active quest for clients.” In pursuing new clients through advertising, lawyers may not communicate information that is false, misleading, deceptive or unfair. Rule 7.1. Even the communication of *truthful* information can be misleading or unfair if it induces the recipient of the information to reach a conclusion about the lawyer or law firm that lacks a factual basis. Comment 2 to the ABA Model Rule of Professional Conduct notes that “[a] truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation.” Model Rule 7.1, cmt [2].

It is the opinion of the Committee that the advertisement in the hypothetical fails to assist the public in making an informed decision about the selection of the attorney. Rather, the implication of the advertisement is that the lawyer or law firm is more charitable than other lawyers or law firms and, thus, better or more honest. It is a type of “comparison ad” which includes information that “cannot be factually substantiated,” similar to a communication that a lawyer or law firm “is ‘the best,’ ‘one of the best,’ or ‘one of the most experienced’ in a particular field of law.” Comment to Rule 1.7(d). *See also* Philadelphia Bar Opinion 95-12 (April 1995) (stating there was “no objective way to verify” law firm’s implied claim that it was “more friendly and more caring” – and thus, better – than other law firms).

The hypothetical also implicates Rules 5.4(a) and 7.2(i). The purpose of these provisions is to maintain lawyers’ independence from outside influences that could affect a client’s representation. A promise to share legal fees with a charitable organization runs afoul of Rule 5.4(a), which prohibits lawyers from sharing legal fees with non-lawyers. The Comment to Rule 7.2(i) states that a lawyer “is not permitted to pay or provide other tangible benefits to another person [or organization] for procuring professional work.” It is reasonable to assume that if particular organizations receive the tangible benefit of the lawyer’s promise to share legal fees, those organizations would refer potential clients exclusively to that lawyer.

This opinion in no way affects the ability of a lawyer or law firm to make donations to charitable organizations or to make the public aware of their civic activities outside the context of an advertisement of services.