

**ETHICS OPINION NUMBER 81
OF THE MISSISSIPPI BAR
RENDERED MARCH 25, 1983
AMENDED APRIL 6, 2013**

INDEPENDENCE OF LAWYER - FEES - Division of fees with deceased partner's estate

The following factual situation is submitted to the Committee for consideration:

A and B formed an unincorporated partnership and signified same by memorandum of understanding. A died. The memorandum did not address the issue of how the estate would be compensated for work in progress. B is under the impression that revenue generated by the time charged to files prior to the death of A will be prorated to A's estate as per the memorandum. How does B deal with the revenue generated by the time expended by B from the point of A's death in files that were in the offices of A and B prior to the time A died?

Previously, Canon 34 governed the division of fees for legal services - No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility.

Based upon this Canon, Informal Opinion No. 509, ABA, was drafted. The facts of that opinion involved a partnership which existed under the name of A, B, and C. Members of the firm were A, B, D and E. Because A did not devote all his time to the partnership work, he was compensated by negotiation at the end of every year. The other members of the firm were compensated on a percentage basis. B died and A and E formed a new partnership with D practicing law in his own name. The partnership agreement of the old firm requires a division of all fees ultimately collected for all business entrusted to the old partnership at the time of B's death, including fees for professional services rendered by D or by the firm of A and E subsequent to B's death. The Committee determined that a division of fees with the estate of B would violate the Canon because the parties would divide fees for work done subsequent to B's death with B's estate, a non-lawyer. The Committee encouraged considerable latitude in determining what portion of the total charge for completion of unfinished work of the old firm was attributable to work done by the old firm on matters prior to B's death. It was pointed out that no fixed rule could be laid down for this and that the circumstances of each case would be controlling.

Presently, we operate under the guidance of Rule 5.4(a) of the Mississippi Rules of Professional Conduct (MRPC) which provides:

A lawyer or law firm shall not share legal fees with a non-lawyer except that:

(1) an agreement by a lawyer with a lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one of more specified persons;

(2) a lawyer who purchases the practice of a law of a deceased, disabled or disappeared lawyer may pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price

It is the opinion of the Committee that since there was not agreement Rule 5.4, MRPC, requires the Committee to find that in the present factual situation, B may not compensate A's estate with any division of fees other than from cases that the partnership worked on with compensation on a quantum meruit basis.