

**ETHICS OPINION NUMBER 91  
OF THE MISSISSIPPI BAR  
RENDERED MARCH 23, 1984  
AMENDED APRIL 6, 2013**

**EXPERT FEES** - An attorney may use the services of a medical consultant who is paid on a contingent fee basis; however, the consultant may not serve as a witness.

The situation under consideration is as follows:

A client wishes to retain a non-lawyer medical consultant to evaluate the medical aspects of his case, assist the attorney during discovery and trial and help find appropriate medical expert witnesses. The consultant will not testify. The medical consultant would be paid a contingent fee which would be a percentage of either the total recovery or the client's share of settlement or judgment. The contingent fee with the medical consultant is separate and distinct from the contingent fee charged by the attorney for his legal services. The attorney has been authorized to pay the consultant's contingent fee out of funds received through settlement or judgment. The client cannot afford to hire a medical consultant on a non-contingent fee basis.

Rule 5.4(a) of the Mississippi Rules of Professional Conduct (“MRPC”) prohibits a lawyer from sharing legal fees with a non-lawyer, but it would not be applicable here since the medical consultant's fees are separate and distinct from the attorney's fees and are not paid from attorney's fees. Witness fees are statutory and expert witness fees are a matter of reasonable cost and expense or, if court appointed, a matter for the court to determine under the Mississippi Rules of Evidence, none of which are applicable here because the medical consultant will not testify in this case. There are no other Mississippi Rules of Professional Conduct that specifically deal with this point.

This issue was addressed by the American Bar Association in Informal Opinion 1375 dated August 10, 1976. In that opinion the ABA Committee on Ethics and Professional Responsibility concluded that such an arrangement was not prohibited as long as the arrangement did not violate the Rule referred to above and the lay person was not engaged in the unauthorized practice of law. However, the opinion cautioned the attorney to retain complete control of the case because he had ultimate responsibility for the outcome.

This issue has also been considered by the Maine State Bar in Opinion No. 67 issued on August 3, 1978, and the Missouri Bar in Informal Opinion 16 issued on November 9, 1978. Both opinions concluded that a contingent fee arrangement with a medical consultant is permissible.

The use of a medical consultant under the circumstances described is permissible so long as the expense is calculated at flat rate and not a percentage of the attorney's fee.