

**ETHICS OPINION NUMBER 180
OF THE MISSISSIPPI BAR
RENDERED DECEMBER 7, 1990**

FIRM NAMES AND LETTERHEADS - It is not improper for a law firm to designate another law firm on its letterhead as "Of Counsel" as long as the relationship is a close, regular and personal one and the usage of the title is not otherwise false or misleading.

The Ethics Committee of the Mississippi State Bar has been requested to render an opinion on the following facts:

An attorney who is a partner in law firm A is also a partner in law firm B. Each law firm desires to have and reflect on their letterhead and in legal directories that each firm is "Of Counsel" to the other. The question presented is whether or not such an arrangement is ethically permitted.

Although this question has never been directly addressed by the Ethics Committee and the Mississippi Rules of Professional Conduct to which Mississippi attorneys must adhere do not speak to this inquiry, recent authority facing this question has approved of this arrangement. ABA Formal Opinion 90-357 (May 10, 1990) concluded that the use of the title "Of Counsel", or variants of that title in identifying the relationship of a lawyer or law firm with another lawyer or firm, is permissible as long as the relationship between the two is a close, regular and personal relationship and the use of the title is not otherwise false or misleading.

The ABA had previously stated that a law firm could not be "Of Counsel" to another lawyer or law firm. See Informal Opinion 1173, (February 19, 1971), and Formal Opinion 330, (August, 1972). These two Opinions stated that the term "Of Counsel" connotes an individual rather than a firm. However, Formal Opinion 90-357 withdrew those Opinions and found that the ABA Committee on Ethics on Professional Responsibility could not now perceive of any reason why a firm should not be of counsel to another firm. Moreover, the ABA Committee noted it had previously held in Informal Opinion 84-351 (1984), that two law firms could ethically present themselves as "affiliated" or "associated" with each other, and in Informal Opinion 1315 (1975), the Committee gave its approval to arrangements whereby two firms effectively became "Of Counsel" to each other by designating a partner of the other firm as "Of Counsel" to itself.

The Ethics Committee of the Mississippi State Bar agrees with the ABA in that we should not be restricted regarding relationships that are commonly designated by the term "Of Counsel". As long as the relationship between the two firms is close, regular and personal, and the usage of the title is not otherwise false or misleading, then the use of the term would be permissible. It should be further noted that the law firms using this designation with each other must scrupulously adhere to the applicable standards regarding disclosure of confidential information and conflicts of interest as if each were a single firm, and the arrangement would entail all the attributes of reciprocal disqualification of all lawyers in each firm.