

**ETHICS OPINION NUMBER 196
OF THE MISSISSIPPI BAR
RENDERED APRIL 11, 1992**

ATTORNEY'S DUTY TO THIRD PERSON - An attorney who discovers that he is violating a statute by charging an excessive attorney's fee in collection suits is under an obligation to cease from doing so in the future, to amend presently pending cases which request the excessive fee, not to collect any fee above the statutory amount in any case where judgments have been taken but not fully paid and use reasonable diligence to identify satisfied judgments where excessive attorney's fees have been paid and to cause those fees to be reimbursed.

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

It has come to an attorney's attention that the attorney's fee he has sought and obtained in certain collection cases is in violation of statute. The willful and intentional violation of this statute is a misdemeanor. The attorney has agreed to review his files and to correct the problems in any pending case and to submit a corrected judgment in any adjudicated matter brought to his attention.

The Ethics Committee has been requested to opine as to whether the attorney has an affirmative duty to search out and correct any existing judgments awarding excessive attorney's fees and whether a distinction should be made between those judgments which have already been paid and those which remain unsatisfied.

An attorney owes an obligation of honesty and trustworthiness to the public under M.R.P.C. 8.4(b) and (c), to the Court under M.R.P.C 3.3 and to third persons under M.R.P.C. 4.1. There can be no question that the continued practice of seeking and obtaining attorney's fees in excess of that allowed by statute violates all these obligations. Likewise, pursuing a judgment in pending cases which seeks the excessive attorney's fees would also violate these obligations. However, the question before the Committee concerns cases in which judgment has already been taken, i.e. the proceeding has concluded, and whether the attorney has an obligation to seek out and correct these past violations.

The Committee will address this question in two parts, beginning first with those judgments which have been obtained but are as yet unsatisfied, and then address the question of judgments which have been satisfied. In the first situation, an attorney is

collecting or attempting to collect a judgment which contains attorney's fees in excess of that allowed by statute. Without consideration of any legal ramifications, it is the opinion of this Committee that knowingly collecting a fee in excess of that allowed by statute after judgment has been rendered is a violation of M.R.P.C. 8.4(b) and (c) which states that

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

As stated in the Comment, "A pattern of repeated offenses can indicate indifference to legal obligation."

M.R.P.C. 4.1 states

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

By collecting the excessive fee contained in the judgment, the attorney by implication is representing that the fee is lawful in violation of M.R.P.C. 4.1(a). By not disclosing the excessive fee the attorney is in violation of M.R.P.C. 4.1(b) since willfully and intentionally violating the statute is a misdemeanor.

A more difficult question presents itself with regard to judgments which have been satisfied. The question is first one of whether excessive fees must be reimbursed in matters in which judgments have been taken and satisfied, and secondly, if so, what affirmative duty does the attorney have in identifying those judgment debtors. Since the matter is no longer pending and all collection efforts have ceased, neither M.R.P.C. 3.3 nor 4.1 are applicable. However, the requirement of honesty pursuant to

M.R.P.C. 8.4(b) and (c) would require the attorney to assume the responsibility of having excessive fees returned to the judgment debtors and to use reasonable diligence to identify those judgment debtors who have paid excessive legal fees. As to the obligation of honesty, the Committee sees no distinction between satisfied and unsatisfied judgments.

For this reason, it is the opinion of the Committee that the attorney must not collect excessive fees on judgments which have been obtained but not satisfied, and must use reasonable diligence to identify and act as the catalyst for the return of excessive fees which have been paid in satisfaction of prior judgments.